Supreme Court, U.S.
FILED
NOV 19 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-65

In The
Supreme Court of the United States
October Term, 1987

UNITED STATES OF AMERICA,
Petitioner,

v.

PROVIDENCE JOURNAL COMPANY and
CHARLES M. HAUSER,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

JOINT APPENDIX

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Petition for Writ filed July 9, 1987
Certiorari granted October 5, 1987

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

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SECTION I

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

January 6, 1986	Application for issuance of show cause order—criminal contempt proceeding filed in United States District Court for the District of Rhode Island.
January 6, 1986	Affidavit in support of application for issuance of show cause order—criminal contempt proceeding filed.
January 6, 1986	Order to show cause—criminal contempt proceeding, granted by Chief Judge Boyle.
February 7, 1986	Agreed statement of facts filed.
February 10, 1986	Hearing held regarding motion to adjudge Providence Journal Company and Charles M. Hauser in contempt. The court takes the matter under advisement.
March 18, 1986	Opinion filed holding respondents in contempt of the order entered November 13, 1985. Hearing is scheduled for 10:00 a.m. March 27, 1986 for the purpose of imposing a penalty.
March 25, 1986	Stipulation filed for the purposes of the contempt proceedings against respondents Providence Journal Company and Charles M. Hauser that: (1) the net worth of respondent Providence Journal Company is in excess of $1,000,000; (2) the net worth of respondent Charles M. Hauser is in excess of $250,000; and (3) the respondents will not contest the imposition of fines, if any, on the ground that the court did not have sufficient evidence concerning the financial status of the respondents.
March 27, 1986	Hearing held regarding sentencing. The court takes the matter under advisement.

April 2, 1986	Opinion filed holding a penalty of fifty cents per copy is reasonable, and therefore a fine in the amount of $100,000 to be satisfied within sixty days is imposed against the Providence Journal Company. Mr. Hauser's sentence is suspended and he is placed on probation for a term of eighteen months on the usual conditions and is further ordered to perform 200 hours of public service in a program provided by the Probation Officer to be carried out within a period of eighteen months from the entry of this order.
April 3, 1986	Notice of appeal and fee filed.
April 3, 1986	Providence Journal Company's application for stay of fine pending appeal filed. Said application is granted without surety by agreement and such order enters.
April 3, 1986	Charles M. Hauser's application for stay pending appeal is filed. Said application is granted by agreement and such order enters.
June 2, 1986	Memo and order received from the Court of Appeals regarding Providence Journal Company and Hauser's motion to supplement the record which was granted. The District Court clerk is to send a certified copy of C.A. 85-707 to the Court of Appeals.
June 3, 1986	Certified copy of C.A. 85-707 sent to Court of Appeals as supplemental record; the transcript of the March 27, 1986 hearing is also sent to the Court of Appeals.
January 21, 1987	Mandate and pleadings returned. Order of the District Court reversed.

UNITED STATES DISTRICT COURT
FOR
THE DISTRICT OF RHODE ISLAND

IN THE MATTER OF APPLICATION TO ADJUDGE THE PROVIDENCE JOURNAL COMPANY AND ITS EXECUTIVE EDITOR, CHARLES M. HAUSER, IN CRIMINAL CONTEMPT	)	C.A. NO.: MISC. 86-003B

APPLICATION FOR ISSUANCE OF SHOW CAUSE ORDER—CRIMINAL CONTEMPT PROCEEDING

(Filed Jan. 6, 1986)

Now comes William A. Curran, Special Prosecutor appointed on December 16, 1985, and says:

1. On November 13, 1985, this Court entered an order enjoining various parties including The Providence Journal Company from distributing, disseminating and otherwise publishing the logs or airtels, or reports thereof, generated as a result of the electronic surveillance conducted at 168 Atwells Avenue, between March of 1962 and July of 1965, as they relate to Raymond J. Patriarca pending hearing at 10:00 a.m. on Friday, November 15, 1985. A copy of said order is attached hereto as Exhibit A.

2. Said order was in full force and effect from November 13, 1985, through November 15, 1985.

3. The Providence Journal Company and its Executive Editor, Charles M. Hauser, were made aware of the aforesaid order, through counsel, as of November 13, 1985, and The Providence Journal Company and its Executive

Editor, Charles M. Hauser, had at all relevant times full knowledge of its terms.

4. The Providence Journal Company and its Executive Editor, Charles M. Hauser, have failed to and refused to comply with and have disobeyed, disregarded and violated the provisions of said order by the following acts and conduct: By disseminating and publishing the said logs or airtels, or reports thereof, on November 14, 1985, while being knowledgeable of the said November 13, 1985 temporary restraining order, said publication being made in one or more articles contained in the newspapers published and distributed by The Providence Journal Company and its Executive Editor, Charles M. Hauser, as is more particularly shown by the affidavit of John F. Cicilline, Esquire, attached hereto as Exhibit B.

5. By reason of the failure and refusal of The Providence Journal Company and its Executive Editor, Charles M. Hauser, to comply with the provisions of said order, The Providence Journal Company and its Executive Editor, Charles M. Hauser, have committed criminal contempts of the authority of this Court.

WHEREFORE, complainant moves the Court for an order in the form annexed finding that probable cause exists to sustain findings of criminal contempts against The Providence Journal Company and its Executive Editor, Charles M. Hauser, and requiring The Providence Journal Company and its Executive Editor, Charles M.

Hauser, to answer and show cause why they should not be adjudged in criminal contempt of this Court, and, upon return of said order, to adjudge The Providence Journal Company and its Executive Editor, Charles M. Hauser, in criminal contempt of this Court for having disobeyed, disregarded, and violated the terms of said order and to punish The Providence Journal Company and its Executive Editor, Charles M. Hauser, for such criminal contempts in such manner as the Court may deem just and proper.

/s/ William A. Curran
Special Prosecutor
1210 Turks Head Building
Providence, RI 02903-2274

(Proof of Service Omitted)

EXHIBIT A

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

Raymond J. Patriarca, Individually
and as Administrator of the Estate
of Raymond L.S. Patriarca

v.

Federal Bureau of Investigation

and

William H. Webster, Director

and

United States Department of Justice

and

Edwin Meese, Attorney General

and

The Providence Journal Company

and

WJAR Television Ten

ORDER

In the above entitled cause the plaintiffs motion for temporary restraining order is granted to the extent that the defendants, severally and individually are restrained from distrubing [sic], disseminating and otherwise publishing the logs or airtels, or reports thereof, generated as a result of the electronic surveillance conducted at 168 Atwells Avenue, between March of 1962 and July of 1965, as they relate to Raymond J. Patriarca. pending [sic] hearing at 10:00 a.m. on Friday, Nov 15, 1985

/s/ Francis J. Boyle
Chief Judge

Entered as an order of this court this 13th day of November, 1985.

/s/ Robert R. Henry
Deputy Clerk

The Providence Journal

East Bay Edition

© Providence Journal Co., Thursday, November 14, 1985 — Five Sections/84 Pages — 35 Cents; $1.70 per week by carrier

—Journal-Bulletin Photo by MICHAEL J.B. KELLY

THE PATRIARCA PAPERS: This July, 1978, photo shows FBI agents lugging boxes of transcripts of tapes recorded at the Providence office of crime figure Raymond L.S. Patriarca. His son, Raymond J. Patriarca, has filed a lawsuit attempting to block release of the tapes' contents.

RAYMOND L.S. PATRIARCA

'Ray tells Ray Jr. that when he gets married to marry an Italian girl as she will stand by you when you're in trouble, or won't call the police if you slap her in the mouth.'

RAYMOND J. PATRIARCA

Court restricts media use of FBI tapes on Patriarca; Journal decides to print

Son of reputed mob leader seeks to block excerpts concerning him

By PAUL DUGGAN
Journal-Bulletin Staff Writer

PROVIDENCE — A federal judge yesterday ordered the *Journal-Bulletin* not to publish information about mob leader Raymond J. "Junior" Patriarca obtained through illegal FBI surveillance. Citing the Constitution's guarantee of a free press, the newspaper today published an article despite the order.

The temporary restraining order signed by Chief Judge Francis J. Boyle of U.S. District Court also applies to WJAR-TV, Channel 10. A Channel 10 spokesman said yesterday that the station would comply.

Today's *Journal-Bulletin* story quotes from conversations between Patriarca and his father, Raymond L.S. Patriarca, the leader of organized crime in New England before his death last year.

The conversations took place between 1962 and 1965, while the FBI had an electronic eavesdropping device planted in the elder Patriarca's Federal Hill storefront. The *Journal-Bulletin*, after nine years of legal skirmishes, began obtaining summaries of the FBI's tape recordings earlier this year through the Freedom of Information Act.

★ ★ ★

THE YOUNGER Patriarca's lawyer, John F. Cicilline, has sued the newspaper, Channel 10 and the Justice Department, charging that public "dissemination" of the FBI material would be an "unwarranted invasion" of his client's privacy. The lawsuit deals only with material pertaining to the younger Patriarca, not to his father.

Patriarca, now 40, was 17 to 20

Turn to COURT, Page A-17

Patriarca Sr. to son: 'You only lie to cops and people you don't know'

By ROBERT KRAMER
Journal-Bulletin Staff Writer

The Patriarca tapes

First in a series

At first, Raymond L.S. Patriarca did not want his son to follow him into crime.

When Raymond J. "Junior" Patriarca graduated from high school in 1962, he wanted to be a lawyer, a goal encouraged by his father.

At the time, the elder Patriarca was head of the New England crime family of La Cosa Nostra, a position he held until his death in 1984. ' directed his crimina' enterprises from his office on Atwells Avenue in Providence. From 1962 through 1965 the FBI had an electronic listening device in the office and recorded and transcribed hundreds of conversations between Patriarca and his henchmen and allies.

The device also picked up conversations between Patriarca and his son.

★ ★ ★

WHAT THEY SHOW is a father worried about his son getting into college and the boy's relations with girls, a father full of advice on how to be a man and pick a woman.

Records of the Atwells Avenue conversations, obtained from the FBI by the *Journal-Bulletin*, show that Junior's goal of becoming a lawyer ran into trouble even before he got to college.

Junior was rejected by Dartmouth, Boston College and Boston University, according to the FBI logs. Patriarca claimed that the rejections were caused by "his family's background," but admitted that "his boy flunked the College Board entrance exams."

Patriarca spent a lot of time looking for contacts who could get the rejections reversed. Finally, however, Junior went to the University of Rhode Island.

★ ★ ★

JUST A FEW WEEKS into his first semester at URI, Junior needed his father's influence. According to the Sept. 24, 1962, log: "Ray discusses Ray Jr.'s trouble in changing a course at URI where he is starting. He mentions that (name withheld by FBI) had just called and had talked with the governor (John A. Notte Jr.). The governor is standing by, (name withheld) wanted to know what course the boy wants to take."

The FBI agent writing the log concluded this entry with: "(I puked here)."

Turn to TAPES, Page A-16

Attachment A

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Court

Continued from Page One

years old at the time his father's office was under surveillance. The FBI, which has since conceded that the eavesdropping was illegal, destroyed the tapes after making transcripts and writing summaries.

Boyle said his restraining order would remain in effect at least until a hearing tomorrow at which lawyers for the *Journal-Bulletin* and Channel 10 will ask him to vacate it and Cicilline will ask him to make it permanent.

Cicilline said he was "delighted" by Boyle's decision.

Matthew F. Medeiros, lawyer for the *Journal-Bulletin* and Channel 10, said he was "disappointed."

Charles McCorkle Hauser, vice president and executive editor of the *Journal-Bulletin,* said in a statement last night that the newspaper decided to print the story in spite of Boyle's order because the First Amendment to the Constitution "prohibits what is known as prior restraint—imposing censorship in advance of publication."

"We have the greatest respect for Judge Boyle, but in this case we are convinced that his order would impose a prior restraint in violation of the Constitution," Hauser said. "For that reason, we have decided to publish in Thursday's *Journal-Bulletin* our article about Raymond J. 'Junior' Patriarca, the first of a series of stories based on the Patriarca tapes."

* * *

THE EAVESDROPPING generated more than 7,000 pages of typed transcripts, summaries and FBI appraisals

of the information. *Journal-Bulletin* metropolitan managing editor Joel P. Rawson and the newspaper has received "the bulk" of the material from the FBI and had been expecting more.

But Boyle also temporarily barred the FBI from releasing more material without expunging references to the younger Patriarca, who allegedly succeeded his father as the leader of organized crime in New England.

Everett C. Sammartino, an assistant U.S. attorney, said the FBI would comply with the order, but that he would argue at tomorrow's hearing that it should be vacated.

Channel 10 aired a news story Nov. 6 based on Patriarca material it already has obtained from the FBI.

But Channel 10 news director David B. Baer said yesterday that the station would abide by Boyle's order. Baer said he was "glad" that Boyle limited his ruling to the younger Patriarca and did not prohibit the use of all information collected and released by the FBI.

• • •

LAWYERS in the case, emerging from a private, half-hour chambers conference with Boyle yesterday, said the judge based his order on his interpretation of a 1979 federal appeals court ruling that denied the *Journal-Bulletin* access to the Patriarca material.

The *Journal-Bulletin* originally requested the material under the Freedom of Information Act in 1976, but FBI officials refused to provide it, saying the information act

required them to weigh Patriarca's right to privacy against the public's right to know.

The law allows the government to withhold information when it decides that the public's interest does not outweigh an individual's right to privacy.

At the time, the FBI said that releasing the material would contribute to an "unwarranted invasion" of the elder Patriarca's privacy.

The *Journal-Bulletin* appealed the FBI's decision to Judge Raymond J. Pettine of U.S. District Court, and Pettine ordered the agency to release the material. But Pettine's ruling was overturned in 1979 by the U.S. Circuit Court of Appeals in Boston.

Cicilline said yesterday that in his view, the appeals court ruling permanently prohibited the release of the material because the FBI had obtained it illegally.

• • •

BUT LAWYERS for the *Journal-Bulletin* and Channel 10 said that in their view, the appeals court did not prohibit the release of the material. It simply ruled that the FBI had the option of withholding the material if it deemed that the elder Patriarca's right to privacy outweighed the public's interest.

Judge Boyle agreed yesterday with Cicilline's interpretation, according to lawyers for both sides.

The FBI, reversing itself, began releasing the material last spring after the *Journal-Bulletin* again requested it under the Freedom of Information Act.

Sammartino, the assistant U.S. attorney, said yesterday that the FBI changed its mind largely because of the elder Patriarca's death in 1984. Cicilline, however, said he has no idea whether the FBI gave fair consideration to the younger Patriarca's right to privacy.

"I don't know what the process was by which the FBI and the Justice Department did a 180-degree turn," Cicilline said. "I would have thought that whenever this review process was going on, they would have notified (Cicilline and Patriarca) about it."

Even if Cicilline's interpretation of the appeals court ruling is incorrect, and even if the FBI did objectively consider his client's right to privacy, Cicilline said, the agency's decision to release the information was unjustified. He said that in this case his client's interests outweigh the public's right to know.

BUT MEDEIROS, lawyer for the *Journal-Bulletin* and Channel 10, argued that regardless of how the media obtained the material, they have a constitutional right to publish and broadcast it.

Medeiros said the U.S. Supreme Court, in blocking the government's attempt to stop publication of the Pentagon Papers, ruled in 1971 that regardless of how a media outlet obtains material—legally or otherwise—once it has gotten that material it has a First Amendment right to disseminate it.

"My position is a little bit different," Cicilline responded. "I think in this circumstance—where the court of appeals has spoken, and said the information ought not to be used (because) of privacy rights—then newspapers cannot publish it in those circumstances."

The younger Patriarca, whose name has emerged in the current Boston trial of five alleged members of his father's crime family, has never been convicted of a crime. A charge of receiving stolen goods was dismissed in 1971 after two prosecution witnesses declined to testify.

In 1976, a participant in the 1975 Bond Vault heist, the largest robbery in Rhode Island history, said the younger Patriarca helped plan the holdup and was to get a share of the nearly $3 million in loot. But he was never charged in the case.

THE JOURNAL'S STATEMENT

This is the text of a statement issued last night by Charles McCorkle Hauser, vice president and executive editor of the *Journal-Bulletin*, in response to the ruling of U.S. District Judge Francis J. Boyle in the Patriarca tapes case:

"The strength and integrity of the American press are based on the First Amendment to the Constitution of the United States, which guarantees freedom of speech and of the press.

"According to the U.S. Supreme Court, that amendment prohibits what is known as prior restraint—imposing censorship in advance of publication.

"We have the greatest respect for Judge Boyle, but in this case we are convinced that his order would impose a prior restraint in violation of the Constitution. For that reason, we have decided to publish in today's *Journal-Bulletin* our article about Raymond J. "Junior" Patri-

arca, the first of a series of stories based on the Patriarca tapes.

"Our lawyers have assured us that Judge Boyle has acted unconstitutionally. However, the decision to publish is solely an editorial judgment.

"While not relevant to the constitutional issue, it is worth noting that the *Journal-Bulletin* obtained the Patriarca tapes in a legal and proper manner after fighting to get them for nine years. They involve people and activities of high public interest, and we believe it is in the best interests of the public to read this material."

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Tapes

Continued from Page One

For part of his time at school, Junior had his own house. "RLP says it was a mistake to rent a home for his son at URI. He received an $87.00 phone bill one month. The IRS heard about it, figured the boy was booking and staked the place out. The new chief of police at Narragansett Beach (Richard A. Colvin) called RLP and warned him of the impending difficulties his son was getting into," according to a log.

But even Governor Notte couldn't keep Junior in school. By October, 1963, Junior had flunked out. Patriarca told him not to be discouraged. He returned to school in the spring of 1964 but, before the year was over, he was out again, according to the logs.

IF PATRIARCA was disappointed, his recorded conversations don't show it. Instead, he talked about putting his "son in automobile business or some other business before he dies. . . . Ray says you don't need a degree to be successful, you just need the backing."

Patriarca provided Junior with money and cars—a Jaguar and a Corvette, among others. Junior raced cars, both on the street and track.

And, after his own fashion, Patriarca gave Junior paternal guidance, according to the logs:

"Ray and Ray Jr. have an argument about taking the wrong car. . . . Ray asked him what he did with the $500 he had. Ray tells Ray Jr. he won't stand for lying from him. He tells him you only lie to cops and people you don't know."

"Raymond continues that you have to be a man to rob and that he never robbed any poor people in his life."

"Ray tells Ray Jr. that when he gets married to marry an Italian girl as she will stand by you when you're in trouble, or won't call the police if you slap her in the mouth."

PATRIARCA WAS NOT always an approving father, but he gave Junior help along with lectures. The logs document Patriarca's reaction when Junior had trouble with a girlfriend:

"Ray says (he) gives kid too much freedom and look what happens. Girl two months pregnant. (Name withheld by FBI) is with Ray and young Ray. If anything goes wrong, young Ray will have to take the blame. Ray tells the kid if you make the cookie, got to eat the cookie.

Girl will come down driving a Pontiac and you tell this girl where to meet this girl so she can take girl to see the doctor and (name withheld) is going to arrange appointment with the doctor on Thursday. Meet at 1:30. . . ."

Patriarca sometimes took an interest in Junior's male friends also.

In one of the logs an agent writes that one of Junior's friends reported to Patriarca regarding his son's activities.

Perhaps because he had his own spy, Patriarca was suspicious of another young man who tried to befriend Junior. "RLP warns his son this boy may be a plant by the 'feds,' " according to a log.

PATRIARCA HAD a long criminal record but he didn't want his son to follow in his footsteps.

After Junior has gotten a speeding ticket, "Raymond tells him to behave himself—that he has a good reputation and he should try to keep it."

Another time, according to a log, "Raymond says he has told his son to always respect the police and be courteous to them. If Raymond Jr. is wrong, Raymond says, he will personally beat him up in the police station. If he is not wrong, Raymond will bring suit against the Providence PD if they continue to harass the boy."

Now, 20 years later, federal law-enforcement officials say Junior—who has never been convicted of a crime—took control of the New England mob after his father's death. They say that Patriarca had been grooming Junior for the top spot for years.

According to recordings played and testimony given in the U.S. District Court trial—currently in progress in Boston—of five men charged with membership in the Patriarca crime family, Junior held an important position in the mob even before the death of his father last year.

BUT, AS RECENTLY as 1981, key members of the Boston branch of the family expressed dissatisfaction with Patriarca's plan to have Junior take over the top job.

"I can't see the kid stepping in the picture for the simple reason, number one, he's too young." Nicolo Angiulo said of Junior, who was 35 years old at the time. "They'll never buy it. That's number one."

The Justice Department has said Nicolo Angiulo was the "consigliere" of the mob under Patriarca.

The boss of a Cosa Nostra crime family is chosen by "soldiers," the rank and file of the family, and then ratified by the Commission, the bosses of the most powerful Cosa Nostra families in the country. By the time Patriarca died in 1984, Junior had apparently overcome the objections of most family members and, according to the FBI, was elected to succeed his father.

Style
Knits are nice as winter hits
Page B-1

Sports
Red Sox send Ojeda to Mets
Page C-7

City
Garbage truck kickback trial is postponed for one week
Page C-1

The Evening Bulletin

122nd year, No. 221, 84 pages - 5 sections | PROVIDENCE, RHODE ISLAND, THURSDAY, NOVEMBER 14, 1985 | © 1985 The Providence Journal Co. 35¢/$1.70 per week by carrier

Today's late news

Victims of police spying awarded $306,250 total

CHICAGO — A federal judge today approved a $306,250 settlement for 20 groups and individuals who accused police of spying on church, anti-war and other organizations during the 1960s and 1970s. The judge agreed to hear arguments from five other plaintiffs seeking to test the constitutionality of the police actions. The tentative agreement approved by U.S. District Judge Susan Getzendanner will pay $20,625 to each of 10 organizations and $10,000 each to 10 individuals. The 25 individuals and civic groups sued the city in 1974, contending a Chicago police department unit systematically spied on and disrupted lawful activities of community, church, anti-war and civic groups. That unit, disbanded in 1975, was dubbed the Red Squad.

U.S., Italy join forces

WASHINGTON — Trying to bury recent disagreements over Italy's handling of the Achille Lauro ship hijacking, U.S. and Italian officials announced new joint efforts to combat international terrorism. Attorney General Edwin Meese and Italy's Interior Minister Oscar Luigi Scalfaro announced that terrorism would be included in the work of the Joint Italian-American Working Group to Combat Narcotics Trafficking and Organized

Court, Journal clash over use of tapes

Despite ruling on Patriarca suit newspaper decides to print excerpts from FBI recordings

By PAUL DUGGAN
and TRACY BRETON
Journal-Bulletin Staff Writers

PROVIDENCE — A federal judge yesterday ordered the *Journal-Bulletin* not to publish information about reputed mob leader Raymond J. "Junior" Patriarca obtained through illegal FBI surveillance. Citing the Constitution's guarantee of a free press, the newspaper today published an article despite the order.

The temporary restraining order signed by Chief Judge Francis J. Boyle of U.S. District Court also applies to WJAR-TV, Channel 10. A Channel 10 spokesman said yesterday that the station would comply.

John F. Cicilline, lawyer for Patriarca, said today he is "aghast" at the *Journal-Bulletin's* decision to defy a court order. He said he is considering taking further legal action against the newspaper.

Judge Boyle said he would not take any punitive action on his own.

Today's *Journal-Bulletin* story quotes from conversations between Patriarca and his father, Raymond L.S. Patriarca, the leader of organized crime in New England before his death last year.

The conversations took place between 1962 and 1965, while the FBI had an electronic eavesdropping device

See COURT, Page A-17

Fatherly advice from Patriarca Sr.

By ROBERT KRAMER
Journal-Bulletin Staff Writer

At first, Raymond L.S. Patriarca did not want his son to follow him into crime.

When Raymond J. "Junior" Patriarca was graduated from high school in 1962, he wanted to be a lawyer — a goal encouraged by his father.

At the time, the elder Patriarca was head of the New England crime family of La Cosa Nostra, a position he held until his death in 1984. He directed his criminal enterprises from his office on Atwells Avenue, Providence.

From 1962 through 1965, the FBI had an electronic listening device in the office and recorded and transcribed hundreds of conversations between Patriarca and his henchmen and allies.

The device also picked up conversations between Patriarca and his son.

The Patriarca tapes

First in a series

WHAT THEY SHOW is a father worried about his son's getting into college and the boy's relations with girls, a father full of advice on how to be a man and pick a woman.

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Junior was rejected by Dartmouth, Boston College and Boston University, according to the FBI logs. Patriarca contended that the rejections were caused by "his family's background," but admitted that "his boy flunked the College Board entrance exams."

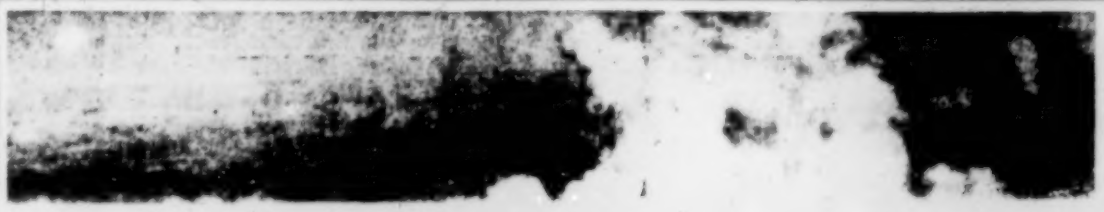
Patriarca spent a lot of time looking for contacts who could get the rejections reversed. Finally, however, Junior went to the University of Rhode Island.

* * *

JUST A FEW WEEKS into his first semester at URI, Junior needed his father's influence. According to the Sept. 24, 1962, log: "Ray discusses Ray Jr.'s trouble in changing a course at URI, where he is starting. He mentions that (name withheld by FBI) had just called and had talked with the governor (John A. Notte Jr.). The governor is standing by (name withheld), who wanted to know what course the boy wants to take."

The FBI agent writing the log concluded this entry with: "(I puked here)."

See TAPES, Page A-16



Big toll feared in Colombian eruption, flood

Attachment B

(p. A-17)

Court

Continued from Page One

planted in the elder Patriarca's Federal Hill storefront. The *Journal-Bulletin,* after nine years of legal skirmishes, began obtaining summaries of the FBI's tape recordings earlier this year through the Freedom of Information Act.

* * *

CICILLINE sued the newspaper, Channel 10 and the Justice Department, charging that public "dissemination" of the FBI material would be an "unwarranted invasion" of his client's privacy. The lawsuit deals only with material pertaining to the younger Patriarca, not to his father.

Patriarca, now 40, was 17 to 20 years old at the time his father's office was under surveillance. The FBI, which has since conceded that the eavesdropping was illegal, destroyed the tapes after making transcripts and written summaries.

Boyle said his restraining order would remain in effect at least until a hearing tomorrow at which lawyers for the *Journal-Bulletin* and Channel 10 will ask him to vacate it and Cicilline will ask him to make it permanent.

Boyle said this morning he had no comment on the newspaper's defiance of his order. He said he did not plan to take action as a result of the newspaper story. Apparently, though, he would consider acting against the newspaper if Cicilline or another party to the suit asked him to.

"That's not up to me," Boyle said. "That is not part of the system, as I understand it. . . . I thought the system of justice involved an adversary system. The judge is not a party."

• • •

CICILLINE SAID yesterday he was "delighted" by Boyle's decision. This morning, he said he criticized the newspaper for violating the court order.

"The Providence *Journal* has written editorials condemning teachers for defying court orders, and condemning people who refuse to answer questions after they are given immunity before a grand jury," Cicilline said when reached at his law office. "The *Journal* has taken the righteous position that the law is the law. But when it serves their own ends, they do it differently."

"I think this is a clear indication of malice," he added.

Cicilline said his client, Patriarca, was "unavailable for comment" this morning, but might have a statement later in the day. He said he would also decide later in the day what action he would take as a result of the newspaper's story.

Freedom of Information Act in 1976, but FBI officials refused to provide it, saying the information act required them to weigh Patriarca's right to privacy against the public's right to know.

The law allows the government to withhold information when it decides that the public's interest does not outweigh an individual's right to privacy.

At the time, the FBI said that releasing the material would contribute to an "unwarranted invasion" of the elder Patriarca's privacy.

The *Journal-Bulletin* appealed the FBI's decision to Judge Raymond J. Pettine of U.S. District Court, and Pettine ordered the agency to release the material. But Pettine's ruling was overturned in 1979 by the U.S. Circuit Court of Appeals in Boston.

Cicilline said yesterday that in his view, the appeals court ruling permanently prohibited the release of the material because the FBI had obtained it illegally.

• • •

BUT LAWYERS for the *Journal-Bulletin* and Channel 10 said that in their view, the appeals court did not prohibit the release of the material. It simply ruled that the FBI had the option of withholding the material if it deemed that the elder Patriarca's right to privacy outweighed the public's interest.

Judge Boyle agreed yesterday with Cicilline's interpretation, according to lawyers for both sides.

The FBI, reversing itself, began releasing the material last spring after the *Journal-Bulletin* again requested it under the Freedom of Information Act.

Everett C. Sammartino, an assistant U.S. attorney, said yesterday that the FBI changed its mind largely because of the elder Patriarca's death in 1984. Cicilline, however, said he has no idea whether the FBI gave fair consideration to the younger Patriarca's right to privacy.

"I don't know what the process was by wihch the FBI and the Justice Department did a 180-degree turn," Cicilline said. "I would have thought that whenever this review process was going on, they would havc notified (Cicilline and Patriarca) about it."

Even if Cicilline's interpretation of the appeals court ruling is incorrect, and even if the FBI did objectively consider his client's right to privacy, Cicilline said, the agency's decision to release the information was unjustified. He said that in this case his client's interests outweigh the public's right to know.

BUT MEDEIROS, lawyer for the *Journal-Bulletin* and Channel 10, argued that regardless of how the media obtained the material, they have a constitutional right to publish and broadcast it.

Medeiros said the U.S. Supreme Court, in blocking the government's attempt to stop publication of the Pentagon Papers, ruled in 1971 that regardless of how a media outlet obtains material—legally or otherwise—once it has gotten that material it has a First Amendment right to disseminate it.

"My position is a little bit different," Cicilline responded. "I think in this circumstance—where the court of appeals has spoken, and said the information ought not to be used (because) of privacy rights—then newspapers cannot publish it in those circumstances."

The younger Patriarca has never been convicted of a crime.

JOURNAL STATEMENT

This is the text of a statement issued last night by Charles McCorkle Hauser, vice president and executive editor of the *Journal-Bulletin,* in response to the ruling of U.S. District Judge Francis J. Boyle in the Patriarca tapes case:

"The strength and integrity of the American press are based on the First Amendment to the Constitution of the United States, which guarantees freedom of speech and of the press.

"According to the U.S. Supreme Court, that amendment prohibits what is known as prior restraint—imposing censorship in advance of publication.

"We have the greatest respect for Judge Boyle, but in this case we are convinced that his order would impose a prior restraint in violation of the Constitution. For that reason, we have decided to publish in today's *Journal-Bulletin* our article about Raymond J. "Junior" Patriarca, the first of a series of stories based on the Patriarca tapes.

"Our lawyers have assured us that Judge Boyle has acted unconstitutionally. However, the decision to publish is solely an editorial judgment.

"While not relevant to the constitutional issue, it is worth noting that the *Journal-Bulletin* obtained the Patriarca tapes in a legal and proper manner after fighting to get them for nine years. They involve people and activities of high public interest, and we believe it is in the best interests of the public to read this material."

(p. A-16)

Tapes

Continued from Page One

For part of his time at school, Junior had his own house. "RLP says it was a mistake to rent a home for his son at URI. He received an $87.00 phone bill one month. The IRS heard about it, figured the boy was booking and staked the place out. The new chief of police at Narragansett Beach (Richard A. Colvin) called RLP and warned him of the impending difficulties his son was getting into," according to a log.

But even Governor Notte couldn't keep Junior in school. By October, 1963, Junior had flunked out. Patriarca told him not to be discouraged. He returned to school in the spring of 1964 but, before the year was over, he was out again, according to the logs.

IF PATRIARCA was disappointed, his recorded conversations don't show it. Instead, he talked about putting his "son in automobile business or some other business before he dies. . . . Ray says you don't need a degree to be successful, you just need the backing."

Patriarca provided Junior with money and cars — a Jaguar and a Corvette, among others. Junior raced cars, both on the street and track.

And, after his own fashion, Patriarca gave Junior paternal guidance, according to the logs:

"Ray and Ray Jr. have an argument about taking the wrong car. . . . Ray asked him what he did with the $500 he had. Ray tells Ray Jr. he won't stand for lying

from him. He tells him you only lie to cops and people you don't know."

"Raymond continues that you have to be a man to rob and that he never robbed any poor people in his life."

"Ray tells Ray Jr. that when he gets married to marry an Italian girl as she will stand by you when you're in trouble, or won't call the police if you slap her in the mouth."

PATRIARCA WAS NOT always an approving father, but he gave Junior help along with lectures. The logs document Patriarca's reaction when Junior had trouble with a girlfriend:

"Ray says (he) gives kid too much freedom and look what happens. Girl two months pregnant. (Name withheld by FBI) is with Ray and young Ray. If anything goes wrong, young Ray will have to take the blame. Ray tells the kid if you make the cookie, got to eat the cookie. Girl will come down driving a Pontiac and you tell this girl where to meet this girl so she can take girl to see the doctor and (name withheld) is going to arrange appointment with the doctor on Thursday. Meet at 1:30. . . ."

Patriarca sometimes took an interest in Junior's male friends also.

In one of the logs an agent writes that one of Junior's friends reported to Patriarca regarding his son's activities.

Perhaps because he had his own spy, Patriarca was suspicious of another young man who tried to befriend Junior. "RLP warns his son this boy may be a plant by the 'feds,'" according to a log.

PATRIARCA HAD a long criminal record but he didn't want his son to follow in his footsteps.

After Junior has gotten a speeding ticket, "Raymond tells him to behave himself — that he has a good reputation and he should try to keep it."

Another time, according to a log, "Raymond says he has told his son to always respect the police and be courteous to them. If Raymond Jr. is wrong, Raymond says, he will personally beat him up in the police station. If he is not wrong, Raymond will bring suit against the Providence PD if they continue to harass the boy."

Now, 20 years later, federal law-enforcement officials say Junior — who has never been convicted of a crime — took control of the New England mob after his father's death. They say that Patriarca had been grooming Junior for the top spot for years.

According to recordings played and testimony given in the U.S. District Court trial — currently in progress in Boston — of five men charged with membership in the Patriarca crime family, Junior held an important position in the mob even before the death of his father last year.

BUT, AS RECENTLY as 1981, key members of the Boston branch of the family expressed dissatisfaction with Patriarca's plan to have Junior take over the top job.

"I can't see the kid stepping in the picture for the simple reason, number one, he's too young," Nicolo Angiulo said of Junior, who was 35 years old at the time. "They'll never buy it. That's number one."

The Justice Department has said Nicolo Angiulo was the "consigliere" of the mob under Patriarca.

The boss of a Cosa Nostra crime family is chosen by "soldiers," the rank and file of the family, and then ratified by the Commission, the bosses of the most powerful Cosa Nostra families in the country. By the time Patriarca died in 1984, Junior had apparently overcome the objections of most family members and, according to the FBI, was elected to succeed his father.

UNITED STATES DISTRICT COURT
FOR
THE DISTRICT OF RHODE ISLAND

IN THE MATTER OF	)	
APPLICATION TO ADJUDGE	)	
THE PROVIDENCE JOURNAL	)	C.A. NO.:
COMPANY AND ITS	)	MISC.
EXECUTIVE EDITOR,	)	86-003B
CHARLES M. HAUSER, IN	)	
CRIMINAL CONTEMPT	)	

AFFIDAVIT IN SUPPORT OF APPLICATION FOR ISSUANCE OF SHOW CAUSE ORDER-CRIMINAL CONTEMPT PROCEEDING

(Filed Jan. 6, 1986)

Now comes John F. Cicilline, who, on oath, deposes and says:

1. That he is the Attorney for Raymond J. Patriarca, individually and as administrator of the estate of Raymond L. S. Patriarca, in connection with a matter brought in this Honorable Court entitled *Raymond J. Patriarca, Individually and as Administrator of the Es-*

tate of Raymond L. S. Patriarca, v. The Federal Bureau of Investigation, William H. Webster, Director, United States Department of Justice, Edwin Meese, Attorney General, The Providence Journal Company, and WJAR Television Ten, C.A. No.: 85-0707B.

2. On November 8, 1985, he filed in behalf of Raymond J. Patriarca, individually and as administrator of the estate of Raymond L. S. Patriarca, a complaint in the United States District Court for the District of Rhode Island to declare unlawful dissemination by the defendants in the matter referred to in the preceding paragraph of logs and airtels compiled during the course of an electronic surveillance during the years 1962 through 1965 at 168 Atwells Avenue in Providence.

3. The complaint asserted, among other things, that the Department of Justice and its Attorney General authorized the release of the illegally obtained logs and airtels to The Providence Journal Company pursuant to a request made by The Providence Journal Company and that the dissemination, publication, and distribution of these logs and airtels served no public purpose, and, in fact, constituted an unwarranted invasion of the plaintiff's personal privacy and that of his late father.

4. On November 13, 1985, Francis J. Boyle, Chief Judge of the District Court for the District of Rhode Island entered an order temporarily restraining said defendants severally and individually from distributing, disseminating, and otherwise publishing the logs, airtels, or reports thereof, generated as a result of the electronic surveillance conducted at 168 Atwells Avenue between March of 1962 and July of 1965 as they relate to Raymond J. Patriarca pending hearing at 10 a.m. on Friday, November 15, 1985.

5. Each defendant in the action referred to in Paragraph 2 above had notice of the Court's order; and, more specifically, The Providence Journal Company was notified of the Court's order on or before November 14, 1985.

6. The party defendants to the action identified in Paragraph 2 and, in particular, The Providence Journal Company and its Executive Editor, Charles M. Hauser, were knowledgeable of the terms and conditions of the aforesaid order.

7. Notwithstanding their knowledge of the order The Providence Journal Company and its Executive Editor, Charles M. Hauser, on November 14, 1985, distributed, disseminated and published the logs, airtels, and reports thereof as is evidenced by attachments A & B (news articles appearing in The Providence Journal Bulletin and The Evening Bulletin both of November 14, 1985).

8. The knowledge of The Providence Journal Company and its Executive Editor, Charles M. Hauser, of the November 13, 1985, order and the decision by them to disregard, disobey and violate said order are clearly set forth in publications by The Providence Journal Company and its Executive Editor, Charles M. Hauser, in attachments A & B.

9. As a result of said publication, distribution and dissemination, Raymond J. Patriarca's right to privacy has been violated and invaded causing him irreparable harm.

10. The dissemination, distribution and publication of the aforesaid materials was done willfully, with malice and disrespect for the Court.

/s/ J. F. Cicilline
John F. Cicilline, Esquire

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

Subscribed and sworn to before me this 6th day of January, 1986.

/s/ William A. Curran
Notary Public

(Proof of Service Omitted)

UNITED STATES DISTRICT COURT
FOR
THE DISTRICT OF RHODE ISLAND

IN THE MATTER OF	)	
APPLICATION TO ADJUDGE	)	
THE PROVIDENCE JOURNAL	)	C.A. NO.:
COMPANY AND ITS	)	Misc. 86-003 B
EXECUTIVE EDITOR,	)	
CHARLES M. HAUSER, IN	)	
CRIMINAL CONTEMPT	)	

ORDER TO SHOW CAUSE-CRIMINAL CONTEMPT PROCEEDING

(Received Jan. 6, 1986)

On consideration of the application by William A. Curran, Special Prosecutor, that The Providence Journal Company and its Executive Editor, Charles M. Hauser, be adjudged in criminal contempt of this Court, it is ORDERED:

Probable cause having been shown that The Providence Journal Company and its Executive Editor, Charles M. Hauser, are in criminal contempt of this Court due to a violation of an order of this Court dated November 13, 1985, The Providence Journal Company and its Executive Editor, Charles M. Hauser, shall appear before this Court in Courtroom 316 on the 10th day of February, 1986, at 9:30 a.m. or as soon thereafter as the matter may be heard, and show cause, if any there be, why an order should not be made adjudging The Providence Journal Company and its Executive Editor, Charles M. Hauser, in criminal contempt of this Court by reason of knowingly and willfully disobeying an order of this Court entered on November 13, 1985, restraining The Providence Jour-

nal Company, among others, from distributing, disseminating and otherwise publishing the logs or airtels, or reports thereof, generated as a result of the electronic surveillance conducted at 168 Atwells Avenue between March of 1962 and July of 1965, as they relate to Raymond J. Patriarca pending hearing at 10:00 a.m. on Friday, November 15, 1985, The Providence Journal and its Executive Editor, Charles M. Hauser, having knowledge of this Court's November 13, 1985 order, but nevertheless disseminating and publishing the said logs or airtels, or reports thereof, on November 14, 1985, in one or more articles contained in the newspapers published and distributed by The Providence Journal Company and its Executive Editor, Charles M. Hauser, and to be dealt with accordingly.

SO ORDERED.

/s/ Francis J. Boyle
Francis J. Boyle, Chief Judge
United States District Court
District of Rhode Island
January 6, 1985

(Proof of Service Omitted)

UNITED STATES DISTRICT COURT
FOR
THE DISTRICT OF RHODE ISLAND

IN THE MATTER OF	)	
APPLICATION TO ADJUDGE	)	
THE PROVIDENCE JOURNAL	)	
COMPANY AND ITS	)	MISC. 86-003B
EXECUTIVE EDITOR,	)	
CHARLES M. HAUSER, IN	)	
CRIMINAL CONTEMPT	)	

AGREED STATEMENT OF FACTS

(Received February 7, 1986)

The parties agree that the following are facts subject to objection to admissibility into evidence based on relevancy or materiality.

1. On November 8, 1985, Raymond J. Patriarca, individually and as administrator of the estate of Raymond L.S. Patriarca, filed a complaint seeking, among other things, an injunction against The Providence Journal Company and others from publication of information gathered by the Federal Bureau of Investigation.

2. Also on November 8, 1985, Raymond J. Patriarca filed a motion for a temporary restraining order and/or injunctive relief.

3. A chambers conference was held on the afternoon of November 13, 1985, regarding Raymond J. Patriarca's motion for a temporary restraining order.

4. Among those in attendance at that conference were attorneys representing The Providence Journal Company, the Federal Bureau of Investigation and Mr. Patriarca.

5. At that conference the Court indicated a willingness to have a hearing regarding injunctive relief the next morning.

6. The Court entered a temporary restraining order on November 13, 1985, in the form hereto attached marked "1."

7. The Providence Journal Company and its Executive Editor, Charles M. Hauser, were made aware of the aforesaid order, through counsel, as of November 13, 1985, and the Providence Journal Company and its Executive Editor, Charles M. Hauser, had at all relevant times full knowledge of its terms.

8. On November 14, 1985, in separate news articles in its morning and evening editions, The Providence Journal Company distributed, disseminated and otherwise published articles in the form hereto attached marked "2" and "3."

9. After hearing on November 15, 1985, (Transcript attached marked "4"), the Court orally continued the temporary restraining order in effect.

10. After hearing on November 19, 1985 (Transcript attached marked "5"), the Court vacated its November 13, 1985 temporary restraining order, by order in the form attached marked "6."

11. The material which was the subject matter of the publication by The Providence Journal Company on November 14, 1985, was illegally obtained by the FBI. The material was lawfully obtained by The Providence Journal Company, earlier in the year before the time of publication, under the Freedom of Information Act from

the FBI. Copies of the following, marked as indicated, are attached:

7a. Letter from Robert Kramer to FBI dated Sept. 26, 1984.

7b. Letter from FBI to Robert Kramer dated Oct. 9, 1984.

7c. Letter from FBI to Mr. Kramer dated Dec. 5, 1984.

7d. Letter from FBI to Mr. Kramer dated Jan. 16, 1985 (2 pages).

7e. Letter from Mr. Kramer to FBI dated Jan. 23, 1985.

7f. Letter from FBI to Mr. Kramer dated Feb. 22, 1985.

7g. Letter from FBI to Mr. Kramer dated June 13, 1985.

12. The material which was the subject matter of the publication by the Journal on November 14, 1985, was in the possession of, and had been, or was about to be, published by other media. Tape transcripts of broadcasts by Channel 12 (WPRI-TV) on November 14, 15, and 18, 1985 are attached hereto marked "8a," "8b" and "8c." A copy of an article published by the *Hartford Courant* on September 22, 1985 is attached hereto marked "8d."

/s/ William A. Curran
William A. Curran
Special Prosecutor

/s/ Edward F. Hindle

/s/ Knight Edwards

/s/ Joseph V. Cavanagh, Jr.
Attorneys for The Providence
Journal Company and
Charles M. Hauser

UNITED STATES DISTRICT COURT
FOR
THE DISTRICT OF RHODE ISLAND

IN THE MATTER OF	)	
APPLICATION TO ADJUDGE	)	
THE PROVIDENCE JOURNAL	)	
COMPANY AND ITS	)	MISC. 86-003B
EXECUTIVE EDITOR,	)	
CHARLES M. HAUSER, IN	)	
CRIMINAL CONTEMPT	)	

SUPPLEMENTAL AGREED STATEMENT OF FACTS

The parties agree that the following are facts subject to objection to admissibility into evidence based on relevancy or materiality.

1. The Providence Journal Company between issuance of the November 13, 1985 temporary restraining order marked "1" and its publications marked "2" and "3" took no steps in any court to seek any stay, recision, modification, vacation, reversal or review of the temporary restraining order.

/s/ William A. Curran
William A. Curran
Special Prosecutor

/s/ Edward F. Hindle

/s/ Knight Edwards

/s/ Joseph V. Cavanagh, Jr.
Attorneys for The Providence
Journal Company and
Charles M. Hauser

1

IN THE DISTRICT COURT OF THE
UNITED STATES FOR
THE DISTRICT OF RHODE ISLAND

Raymond J. Patriarca, Individually
and as Administrator of the Estate
of Raymond L.S. Patriarca

v.

Federal Bureau of Investigation

and

William H. Webster, Director

and

United States Department of Justice

and

Edwin Meese, Attorney General

and

The Providence Journal Company

and

WJAR Television Ten

ORDER

In the above entitled cause the plaintiffs motion for temporary restraining order is granted to the extent that the defendants, severally and individually are restrained from distrubing [sic], disseminating and otherwise publishing the logs or airtels, or reports thereof, generated as a result of the electronic surveillance conducted at 168 Atwells Avenue, between March of 1962 and July of 1965, as they

relate to Raymond J. Patriarca. pending [sic] hearing at 10:00 a.m. on Friday, Nov 15, 1985

/s/ Francis J. Boyle
Chief Judge

Entered as an order of this court this 13th day of November 1985.

/s/ Robert R. Henry
Deputy Clerk

The Providence Journal

City Edition

© Providence Journal Co., Thursday, November 14, 1985 — Five Sections/84 Pages — 35 Cents; $1.70 per week by carrier

—Journal-Bulletin Photo by MICHAEL J.B. KELLY

THE PATRIARCA PAPERS: This July, 1978, photo shows FBI agents lugging boxes of transcripts of tapes recorded at the Providence office of crime figure Raymond L.S. Patriarca. His son, Raymond J. Patriarca, has filed a lawsuit attempting to block release of the tapes' contents.

Court restricts media use of FBI tapes on Patriarca; Journal decides to print

Son of reputed mob leader seeks to block excerpts concerning him

By PAUL DUGGAN
Journal-Bulletin Staff Writer

PROVIDENCE — A federal judge yesterday ordered the *Journal-Bulletin* not to publish information about mob leader Raymond J. "Junior" Patriarca obtained through illegal FBI surveillance. Citing the Constitution's guarantee of a free press, the newspaper today published an article despite the order.

The temporary restraining order signed by Chief Judge Francis J. Boyle of U.S. District Court also applies to WJAR-TV, Channel 10. A Channel 10 spokesman said yesterday that the station would comply.

Today's *Journal-Bulletin* story quotes from conversations between Patriarca and his father, Raymond L.S. Patriarca, the leader of organized crime in New England before his death last year.

The conversations took place between 1962 and 1965, while the FBI had an electronic eavesdropping device planted in the elder Patriarca's Federal Hill storefront. The *Journal-Bulletin*, after nine years of legal skirmishes, began obtaining summaries of the FBI's tape recordings earlier this year through the Freedom of Information Act.

★ ★ ★

THE YOUNGER Patriarca's lawyer, John F. Cicilline, has sued the newspaper, Channel 10 and the Justice Department, charging that public "dissemination" of the FBI material would be an "unwarranted invasion" of his client's privacy. The lawsuit deals only with material pertaining to the younger Patriarca, not to his father.

Patriarca, now 40, was 17 to 20

Turn to COURT, Page A-17

Patriarca Sr. to son: 'You only lie to cops and people you don't know'

By ROBERT KRAMER
Journal-Bulletin Staff Writer

The Patriarca tapes

First in a series

At first, Raymond L.S. Patriarca did not want his son to follow him into crime.

When Raymond J. "Junior" Patriarca graduated from high school in 1962, he wanted to be a lawyer, a goal encouraged by his father.

At the time, the elder Patriarca was head of the New England crime family of La Cosa Nostra, a position he held until his death in 1984. He directed his criminal enterprises from his office on Atwells Avenue in Providence. From 1962 through 1965 the FBI had an electronic listening device in the office and recorded and transcribed hundreds of conversations between Patriarca and his henchmen and allies.

The device also picked up conversations between Patriarca and his son.

★ ★ ★

WHAT THEY SHOW is a father worried about his son getting into college and the boy's relations with girls, a father full of advice on how to be a man and pick a woman.

Records of the Atwells Avenue conversations, obtained from the FBI by the *Journal-Bulletin*, show that Junior's goal of becoming a lawyer ran into trouble even before he got to college.

Junior was rejected by Dartmouth, Boston College and Boston University, according to the FBI logs. Patriarca claimed that the rejections were caused by "his family's background," but admitted that "his boy flunked the College Board entrance exams."

Patriarca spent a lot of time looking for contacts who could get the rejections reversed. Finally, however, Junior went to the University of Rhode Island.

★ ★ ★

JUST A FEW WEEKS into his first semester at URI, Junior needed his father's influence. According to the Sept. 24, 1962, log: "Ray discusses Ray Jr.'s trouble in changing a course at URI where he is starting. He mentions that (name withheld by FBI) had just called and had talked with the governor (John A. Notte Jr.). The governor is standing by, (name withheld) wanted to know what course the boy wants to take."

The FBI agent writing the log concluded this entry with: "(I puked here)."

Turn to TAPES, Page A-16

RAYMOND L.S. PATRIARCA

'Ray tells Ray Jr. that when he gets married to marry an Italian girl as she will stand by you when you're in trouble, or won't call the police if you slap her in the mouth.'

RAYMOND J. PATRIARCA

(p. A-17)

Court

Continued from Page One

years old at the time his father's office was under surveillance. The FBI, which has since conceded that the eavesdropping was illegal, destroyed the tapes after making transcripts and writing summaries.

Boyle said his restraining order would remain in effect at least until a hearing tomorrow at which lawyers for the *Journal-Bulletin* and Channel 10 will ask him to vacate it and Cicilline will ask him to make it permanent.

Cicilline said he was "delighted" by Boyle's decision.

Matthew F. Medeiros, lawyer for the *Journal-Bulletin* and Channel 10, said he was "disappointed."

Charles McCorkle Hauser, vice president and executive editor of the *Journal-Bulletin*, said in a statement last night that the newspaper decided to print the story in spite of Boyle's order because the First Amendment to the Constitution "prohibits what is known as prior restraint—imposing censorship in advance of publication."

"We have the greatest respect for Judge Boyle, but in this case we are convinced that his order would impose a prior restraint in violation of the Constitution," Hauser said. "For that reason, we have decided to publish in Thursday's *Journal-Bulletin* our article about Raymond J. 'Junior' Patriarca, the first of a series of stories based on the Patriarca tapes."

• • •

THE EAVESDROPPING generated more than 7,000 pages of typed transcripts, summaries and FBI appraisals of the information. *Journal-Bulletin* metropolitan managing editor Joel P. Rawson said the newspaper has received "the bulk" of the material from the FBI and had been expecting more.

But Boyle also temporarily barred the FBI from releasing more material without expunging references to the younger Patriarca, who allegedly succeeded his father as the leader of organized crime in New England.

Everett C. Sammartino, an assistant U.S. attorney, said the FBI would comply with the order, but that he would argue at tomorrow's hearing that it should be vacated.

Channel 10 aired a news story Nov. 6 based on Patriarca material it already has obtained from the FBI.

But Channel 10 news director David B. Baer said yesterday that the station would abide by Boyle's order. Baer said he was "glad" that Boyle limited his ruling to the younger Patriarca and did not prohibit the use of all information collected and released by the FBI.

• • •

LAWYERS in the case, emerging from a private, half-hour chambers conference with Boyle yesterday, said the judge based his order on his interpretation of a 1979 federal appeals court ruling that denied the *Journal-Bulletin* access to the Patriarca material.

The *Journal-Bulletin* originally requested the material under the Freedom of Information Act in 1976, but

FBI officials refused to provide it, saying the information act required them to weigh Patriarca's right to privacy against the public's right to know.

The law allows the government to withhold information when it decides that the public's interest does not outweigh an individual's right to privacy

At the time, the FBI said that releasing the material would contribute to an "unwarranted invasion" of the elder Patriarca's privacy.

The *Journal-Bulletin* appealed the FBI's decision to Judge Raymond J. Pettine of U.S. District Court, and Pettine ordered the agency to release the material. But Pettine's ruling was overturned in 1979 by the U.S. Circuit Court of Appeals in Boston.

Cicilline said yesterday that in his view, the appeals court ruling permanently prohibited the release of the material because the FBI had obtained it illegally.

• • •

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Judge Boyle agreed yesterday with Cicilline's interpretation, according to lawyers for both sides.

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The younger Patriarca, whose name has emerged in the current Boston trial of five alleged members of his father's crime family, has never been convicted of a crime. A charge of receiving stolen goods was dismissed in 1971 after two prosecution witnesses declined to testify.

In 1976, a participant in the 1975 Bond Vault heist, the largest robbery in Rhode Island history, said the younger Patriarca helped plan the holdup and was to get a share of the nearly $3 million in loot. But he was never charged in the case.

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Tapes

Continued from Page One

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Knits are nice as winter hits
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Red Sox send Ojeda to Mets
Page C-7

City
Garbage truck kickback trial is postponed for one week
Page C-1

The Evening Bulletin

122nd year, No. 221, 84 pages - 5 sections | PROVIDENCE, RHODE ISLAND, THURSDAY, NOVEMBER 14, 1985 | © 1985 The Providence Journal Co. 35¢/$1.70 per week by carrier

Today's late news

Victims of police spying awarded $306,250 total

CHICAGO — A federal judge today approved a $306,250 settlement for 20 groups and individuals who accused police of spying on church, anti-war and other organizations during the 1960s and 1970s. The judge agreed to hear arguments from five other plaintiffs seeking to test the constitutionality of the police actions. The tentative agreement approved by U.S. District Judge Susan Getzendanner will pay $20,625 to each of 10 organizations and $10,000 each to 10 individuals. The 25 individuals and civic groups sued the city in 1974, contending a Chicago police department unit systematically spied on and disrupted lawful activities of community, church, anti-war and civic groups. That unit, disbanded in 1975, was dubbed the Red Squad.

U.S., Italy join forces

WASHINGTON — Trying to bury recent disagreements over Italy's handling of the Achille Lauro ship hijacking, U.S. and Italian officials announced new joint efforts to combat international terrorism. Attorney General Edwin Meese and Italy's Interior Minister Oscar Luigi Scalfaro announced that terrorism would be included in the work of the Joint Italian-American Working Group to Combat Narcotics Trafficking and Organized Crime. Meese said the two nations are united

Court, Journal clash over use of tapes

Despite ruling on Patriarca suit newspaper decides to print excerpts from FBI recordings

By PAUL DUGGAN
and TRACY BRETON
Journal-Bulletin Staff Writers

PROVIDENCE — A federal judge yesterday ordered the *Journal-Bulletin* not to publish information about reputed mob leader Raymond J. "Junior" Patriarca obtained through illegal FBI surveillance. Citing the Constitution's guarantee of a free press, the newspaper today published an article despite the order.

The temporary restraining order signed by Chief Judge Francis J. Boyle of U.S. District Court also applies to WJAR-TV, Channel 10. A Channel 10 spokesman said yesterday that the station would comply.

John F. Cicilline, lawyer for Patriarca, said today he is "aghast" at the *Journal-Bulletin's* decision to defy a court order. He said he is considering taking further legal action against the newspaper.

Judge Boyle said he would not take any punitive action on his own.

Today's *Journal-Bulletin* story quotes from conversations between Patriarca and his father, Raymond L.S. Patriarca, the leader of organized crime in New England before his death last year.

The conversations took place between 1962 and 1965, while the FBI had an electronic eavesdropping device

See COURT, Page A-17

Fatherly advice from Patriarca Sr.

By ROBERT KRAMER
Journal-Bulletin Staff Writer

The Patriarca tapes

First in a series

At first, Raymond L.S. Patriarca did not want his son to follow him into crime.

When Raymond J. "Junior" Patriarca was graduated from high school in 1962, he wanted to be a lawyer — a goal encouraged by his father.

At the time, the elder Patriarca was head of the New England crime family of La Cosa Nostra, a position he held until his death in 1984. He directed his criminal enterprises from his office on Atwells Avenue, Providence.

From 1962 through 1965, the FBI had an electronic listening device in the office and recorded and transcribed hundreds of conversations between Patriarca and his henchmen and allies.

The device also picked up conversations between Patriarca and his son.

WHAT THEY SHOW is a father worried about his son's getting into college and the boy's relations with girls, a father full of advice on how to be a man and pick a woman.

Records of the Atwells Avenue conversations, obtained from the FBI by the *Journal-Bulletin*, show that Junior's goal of becoming a lawyer ran into trouble even before he got to college.

Junior was rejected by Dartmouth, Boston College and Boston University, according to the FBI logs. Patriarca contended that the rejections were caused by "his family's background," but admitted that "his boy flunked the College Board entrance exams."

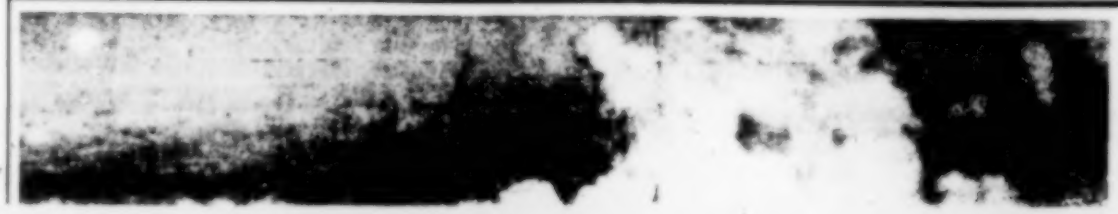
Patriarca spent a lot of time looking for contacts who could get the rejections reversed. Finally, however, Junior went to the University of Rhode Island.

* * *

JUST A FEW WEEKS into his first semester at URI, Junior needed his father's influence. According to the Sept. 24, 1962, log: "Ray discusses Ray Jr.'s trouble in changing a course at URI, where he is starting. He mentions that (name withheld by FBI) had just called and had talked with the governor (John A. Notte Jr.). The governor is standing by (name withheld), who wanted to know what course the boy wants to take."

The FBI agent writing the log concluded this entry with: "(I puked here)."

See TAPES, Page A-16



Big toll feared in Colombian eruption, flood

(p. A-17)

Court

Continued from Page One

planted in the elder Patriarca's Federal Hill storefront. The *Journal-Bulletin*, after nine years of legal skirmishes, began obtaining summaries of the FBI's tape recordings earlier this year through the Freedom of Information Act.

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CICILLINE sued the newspaper, Channel 10 and the Justice Department, charging that public "dissemination" of the FBI material would be an "unwarranted invasion" of his client's privacy. The lawsuit deals only with material pertaining to the younger Patriarca, not to his father.

Patriarca, now 40, was 17 to 20 years old at the time his father's office was under surveillance. The FBI, which has since conceded that the eavesdropping was illegal, destroyed the tapes after making transcripts and written summaries.

Boyle said his restraining order would remain in effect at least until a hearing tomorrow at which lawyers for the *Journal-Bulletin* and Channel 10 will ask him to vacate it and Cicilline will ask him to make it permanent.

Boyle said this morning he had no comment on the newspaper's defiance of his order. He said he did not plan to take action as a result of the newspaper story. Apparently, though, he would consider acting against the newspaper if Cicilline or another party to the suit asked him to.

"That's not up to me," Boyle said. "That is not part of the system, as I understand it. . . . I thought the system of justice involved an adversary system. The judge is not a party."

• • •

CICILLINE SAID yesterday he was "delighted" by Boyle's decision. This morning, he said he criticized the newspaper for violating the court order.

"The Providence *Journal* has written editorials condemning teachers for defying court orders, and condemning people who refuse to answer qestions after they are given immunity before a grand jury," Cicilline said when reached at his law office. "The *Journal* has taken the righteous position that the law is the law. But when it serves their own ends, they do it differently."

"I think this is a clear indication of malice," he added.

Cicilline said his client, Patriarca, was "unavailable for comment" this morning, but might have a statement later in the day. He said he would also decide later in the day what action he would take as a result of the newspaper story.

Freedom of Information Act in 1976, but FBI officials refused to provide it, saying the information act required them to weigh Patriarca's right to privacy against the public's right to know.

The law allows the government to withhold information when it decides that the public's interest does not outweigh an individual's right to privacy.

At the time, the FBI said that releasing the material would contribute to an "unwarranted invasion" of the elder Patriarca's privacy.

The *Journal-Bulletin* appealed the FBI's decision to Judge Raymond J. Pettine of U.S. District Court, and Pettine ordered the agency to release the material. But Pettine's ruling was overturned in 1979 by the U.S. Circuit Court of Appeals in Boston.

Cicilline said yesterday that in his view, the appeals court ruling permanently prohibited the release of the material because the FBI had obtained it illegally.

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Continued from Page One

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4

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

RAYMOND J. PATRIARCA — CA 85-0707B

Plaintiff

v — 15 November 1985

FEDERAL BUREAU OF INVESTIGATION, et al — Providence, R.I.

Defendants

TRANSCRIPT OF DECISION
BEFORE CHIEF JUDGE FRANCIS J. BOYLE

APPEARANCES:

FOR THE PLAINTIFF: JOHN CICILLINE, ESQ.
165 Atwells Avenue
Providence, R.I., 02903

FOR THE DEFENDANTS: JOSEPH CAVANAGH, JR., ESQ.
MATT MEDEIROS, ESQ.
EVERETT SAMMARTINO, ESQ.

COURT REPORTER: ALFRED GALLUCCI
301 Federal Court
Providence, R.I. 02903

(p. 1) 15 NOVEMBER 1985

The Court: This action was filed in this court on November 8th, one week ago today, and seeks injunctive relief with respect to certain materials obtained by reason of a bug, so-called, being placed in the premises at Number 168 Atwells Avenue in the City of Providence, something more than twenty years ago, between the years 1962 and 1965.

The complaint is brought by Raymond J. Patriarca and, as I understand counsel's stipulation, relates only to that material which concerns Raymond J. Patriarca, and not any others involved in any conversations that may have been recorded as a result of the bug.

Sometime after the information was compiled by the FBI in the form of logs and airtels, the Providence Journal Company, a defendant in this action, sought to obtain the information from the FBI. The FBI refused at that time to provide the information, and the Providence Journal Company brought suit in this court. Judge Pettine filed two opinions with respect to that litigation and divided the material into three categories, Numbers 1, 2, 3, ordered the production of Category 2 material and ordered that materials falling into Categories 1 and 3 would be retained. In general, Category 1 material related to personal details of the life of Raymond L.S. Patriarca. (p. 2) Both parties, as I understand it, appealed to the Court of Appeals and the Court of Appeals reversed Judge Pettine with respect to the Category 2 material. Part of the battleground of this litigation is the meaning of and the implications that flow from the Court of Appeals decision in the case of Providence Journal Company v the FBI.

This action was precipitated by the fact that the plaintiff Raymond J. Patriarca apparently became aware

that the FBI at some time in the recent past had made available to the defendant Providence Journal Company and to WJAR Television 10, some of the material that related to the airtels and the logs of the 1962 through 1965 bugging. And it is contended that the Providence Journal Company published some of the information.

In this instance, although the materials had been furnished to the defendants, none of the parties have yet responded to the Court's demand that the materials be made available to the Court, nor had the materials been made available to the plaintiff. There is, therefore, something of the aura of mystery as to exactly what's in this material, a mystery which is not yet dispelled so far as the Court's concerned. I simply do not know what's in the material, and that makes it a little difficult for the Court to make a decision that some reasonable (p. 3) expectation is the correct decision under the circumstances.

There is no doubt that the First Amendment to the Constitution of the United States is a most significant aspect of our society and its operation. We have a free press which is certainly the freest in the world, and by reason of which society has benefitted without question. It's important that people be informed as to the affairs of their Government, the events that transpire in society, and the press has done this very effectively in this country. And so that they have done so because of the fact that there are no real limitations with respect to what may be considered an exercise of the First Amendment right of freedom of the press. And the rule is well established that there shall be no prior restraint of a free exercise of the press rights conferred by the First Amendment.

The issue at this point is, it seems to me, on continuation of the restraining order, whether or not the plaintiff has presented issues which on proper reflection might very well be found to have merit. It is not a matter of my determining the ultimate question at this point, but whether or not there is sufficient reason to defer until such time as the Court has had a realistic opportunity to consider what seems to be the rather unique issues raised by this litigation.

(p. 4) There appears to be a basis for arguing that there is here represented a clash between two fundamental rights, first, the right of a free press that is conferred by the First Amendment, in unequivocal terms, that Congress shall not abridge, freedom of the press; and the second in equally unequivocal terms, that the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated. A simple application of the English language demonstrates that both of these are in commandment forms, and that they are unqualified. We are aware that in applying the Constitution 200 years after it's written, that sometimes the words that are written do not come out exactly as they are written, and that there has to be a workable scheme established that takes into consideration all aspects of the Bill of Rights, and gives meaning and effect to each of the provisions of the Bills of Right.

This case raises, it seems to me, a rather fundamental issue of whether the Government can, at will, violate an individual's Fifth Amendment rights, and leave the individual with no remedy available, should the Government turn the information over to an individual who would publish it or to a newspaper or television station who would

publish it. And it seems to me that before this substantial infringement on the rights of individuals is condoned, that some more (p. 5) study ought to be given to the problem. It merits that study.

Now, it seems to me there is something to the argument that an injunction at this point is not a prior restraint, that there is something to the suggestion that the Court of Appeals has already limited the defendant, Providence Journal Company, at least, with respect to the materials which it may publish, in the FBI's refusal to honor the request and the Court of Appeals approval of that refusal.

I'm also faced with the problem here of the effect of not deterring publication at this point, with the result that the information is published and the action is moot. The Court of Appeals of the First Circuit was very much concerned with that issue the first time that this issue went there, and stayed Judge Pettine's order for the duration of time that the matter was pending on appeal. The Court of Appeals pointed out, and I think quite correctly, that at 595 F.2d 890: "Meaningful review entails having the reviewing court take a fresh look at the decision of the trial court, before it becomes irrevocable. Appellants' right of appeal here will become moot unless the stay is continued pending determination of the appeals. Once the documents are surrendered pursuant to the lower court's order, confidentiality will be lost for all time. The status quo could never be restored.

"Appellants are not, of course, entitled to a stay (p. 6) pending appeal wifhout showing that their appeals have potential merit. We believe that they have made a

sufficient showing on this score. Where, as here, the denial of a stay will utterly destroy the status quo, irreparably harming appellants but the granting of a stay will cause relatively slight harm to appellee, appellants need not show an absolute probability of success in order to be entitled to a stay." I might here observe that we are here concerned with statements uttered between the years 1962 and 1965, and that there are some who consider that anything that happened more than ten years ago is history; that certainly a short delay in the publication of this material is not going to be a substantial harm to anyone, particularly where the competing interests are such as are here.

The Supreme Court has suggested that courts may indeed stay publication for short periods of time. In Southeastern Promotions, Ltd. v. Steve Conrad, 420 US 546, at 560, the court said this in part: "We held in Freedman, and we reaffirm here, that a system of prior restraint runs afoul of the First Amendment if it lacks certain safeguards: First, the burden of instituting judicial proceedings, and of proving that the material is unprotected, must rest on the censor. Second, any restraint prior to judicial review can be imposed only for a specified brief period and only for the purpose of preserving the status quo. Third, a prompt (p. 7) final judicial determination must be assured."

The contentions of the plaintiffs here find some support it seems to me in the New York Times case, the so-called Pentagon Papers case, at 403 US 713, Footnote Number 1, there the court said this: "The Congress has authorized a strain of prior restraints against private parties in certain instances. The National Labor Rela-

tions Board routinely issues cease and desist orders against employers who it finds have threatened or coerced employees in the exercise of protected rights. Citing the statute. Similarly the Federal Trade Commission is empowered to impose cease and desist orders against unfair methods of competition. Citing the statute. Such orders can, and quite often do, restrict what may be spoken or written under certain circumstances. Citing NLRB v Gissel Packing. Article 1, Section 8 of the Constitution authorizes Congress to secure the 'exclusive right' of authors to their writings, and no one denies that a newspaper can properly be enjoined from publishing the copyrighted works of another. Citing Westermann Co. v Dispatch Co. Newspapers do themselves rely from time to time on the copyright as a means of protecting their accounts of important events. However, those enjoined under the statutes relating to the National Labor Relations Board and the Federal Trade Commission are private parties, not the press; and when (p. 8) the press is enjoined under the copyright laws, the complainant is a private copyright holder enforcing a private right. These situations are quite distinct from the Government's request for an injunction against publishing information about the affairs of government, a request admittedly not based on any statute."

Here, the request is purportedly based on the statute and also finds some support, at least, in the Bill of Rights itself.

Under the circumstances, the Court will continue the restraining order, and I am prepared to hear this matter on preliminary injunction on next Tuesday morning at 10 o'clock, if counsel can be prepared to do it at that time.

I would appreciate having any law that can help us on this point as soon as possible. Can you be ready next Tuesday?

Mr. Cicilline: I can be ready. I'm not certain whether Judge Kiely will let me come over.

The Court: We'll do it at night, all right?

Mr. Cicilline: I'm sorry?

The Court: We'll do it at night.

Mr. Cicilline: I'm scheduled to impanel a jury on Monday morning in a case they tell me will run about two weeks. I will make efforts with Judge Kiely.

The Court: All right. Well, if you could talk with him and see if you can be available. I don't know as it (p. 9) will take us much time because I would want to hear only something new. I don't want to go through the whole business all over again.

Mr. Cavanagh: Your Honor, to just move this along, my suggestion would be that you enter a preliminary injunction today, and set it down for permanent injunction.

The Court: I may not be prepared to enter a preliminary injunction. Now, I understand what your problem is at this point, if you have a restraining order you have some difficulties with an appeal.

Mr. Cavanagh: That's right.

The Court: And I certainly want to see you get the opportunity to take an appeal just as soon as possible, but I do think I'm entitled to have a little more time to think about this problem, and a little more help from counsel.

Mr. Cavanagh: Well, as a practical matter, if a preliminary injunction is termed preliminary, but in fact a

preliminary injunction hearing is set at a time that gives you adequate time to decide it and gives us adequate time to brief it, I don't see where it makes any difference. The injunction is the same. The only problem for us is that we would like to bring this to another court. We're prevented from doing it because of the description as either temporary or preliminary. It doesn't make much sense, I (p. 10) respectfully suggest, and if you'd like us to have that opportunity to be heard, I ask you that you enter it preliminarily with the idea that it really is a short term injunction because you're going to hear it on permanent, if the First Circuit doesn't hear us.

The Court: It doesn't make any difference to me except that there aren't enough findings in the record, it seems to me, at this point.

Mr. Sammartino: Respectfully, Your Honor, there is a body of cases which state that once the Court submits it for hearing, it thereby becomes a preliminary injunction. I was under the impression that's what we were here for today.

The Court: Well, you didn't hear what I said a little bit earlier this morning.

Mr. Sammartino: Well, I know what the Court said.

The Court: I was hearing it on an order to show cause whether the restraining order should be continued. I thought I had made that clear.

Mr. Sammartino: Once the Court grants the temporary restraining order ex parte, as it did in chambers, and puts it down for hearing, the cases state it immediately goes into preliminary injunction status, and this is important relative to our rights of appeal. I just state that on the record, your Honor.

(p. 11) Mr. Cavanagh: Your Honor, again what we would ask for is whatever you enter today be—

The Court: Well, I don't want to hold you up, but I think in fairness to this Court, that we ought to have some time to think about it. I'm not prepared to say that I'm going to enter a preliminary injunction at this point. I'm not satisfied one way or the other. I am satisfied that if an order isn't in effect, that this matter could be completely moot in fairly short order, and that at least we ought to have a little bit of time to think about the issues.

Mr. Cavanagh: The problem for us is that the more we think about it, it stated on Wednesday, and we're now going to go to Tuesday, the First Amendment rights from our point of view are being harmed, and—

The Court: I understand that.

Mr. Cavanagh: —in a way it is almost unprecedented, and what I'm suggesting is that if you want more time, well if the injunction is described as preliminary, that at least gives us the right to go to the First Circuit, and they can consider the matter, they can dispose of it at that time, they can send it back, but at least we can seek immediate review.

The Court: Well, I wish you had raised this question earlier today. My frame of mind might have been a little (p. 12) different in terms of what I was actually hearing.

Mr. Cavanagh: The effect of what you're doing now, it is very important, and it is like a preliminary injunction.

The Court: I'm also prepared to hear this next Tuesday. Now that's pretty good service, I think, and that's

what I'm prepared to do. You can have an exception, if that's going to do you any good.

Now, there is a motion here to cite one of the defendants in contempt. What do you want to do with that?

Mr. Cicilline: I received no answer to it, and as I understand the defendant's position is that they want an opportunity to respond in writing.

Mr. Medeiros: Your Honor, our position is that under Local Rule 12, we're entitled to ten days to file any objection, memorandum—

The Court: All right, then I must say that I would appreciate it if you would look at some cases, particularly the United Mine Workers case, and see if you can come to some agreement as to whether the motion raises questions involving civil contempt, or criminal contempt, and I understand there was a stipulation that I saw someplace this morning that both of you agreed that it was civil contempt. I must say that I'm not prepared to enter that stipulation at this point in time, because if you look at the case law, you may very well come to the conclusion that the motion (p. 13) raises questions of criminal contempt rather than civil contempt. Now, if that's the case, then we're involved with Rule 42, I think it's 42, which requires notice and a hearing. 42 also provides that a party charged with criminal contempt, has a right to a jury trial if certain statutes require it. I must say I don't know of any statutes that require it in this instance but there may be. I'm going to ask counsel to take a look at that and see what it looks like. Mr. Cicilline, you prepare and present a form of order.

Mr. Cicilline: I will, your Honor.

The Court: Anything further?

Mr. Cavanagh: Your Honor, with respect to the hearing scheduled for Tuesday, we'll provide you with any additional information you would like, in addition to a brief and further cases, is there anything else you have in mind?

The Court: The problem that, from your point of view, what I'm really interested in is this interaction of the Fourth and the Fifth Amendment, if you can give me anything further on that. There's a lot of law that may be close to some of the problems we have, and I do think a little bit more time might sharpen this up a little better. For instance, it may be if I decide on Tuesday to deny a preliminary injunction, you don't have to worry about an appeal, and then we don't bother the Court of Appeals, which (p. 14) is something they might be grateful for. From the plaintiff's point of view, what I'm interested in is this contention that the court's involvement is an exercise in futility, that we are trying to hold back the tide, and do not have the resources to accomplish it, because as more time goes by, it may be that that argument takes on more vitality.

Mr. Cicilline: It is my understanding at this point that the Justice Department is not further distributing the logs and airtels, and it would seem to me that whatever has already been distributed has probably already been published.

The Court: That we don't know. And I suspect nobody is going to tell us that, either.

Mr. Cicilline: I bring that up in connection with my complaint, the original prayer requests that we be fur-

nished with copies. So long as the Court has been assured that it can receive them within a week, may the order enter allowing us to obtain copies of the same?

The Court: Is the Government prepared to give to the plaintiff a copy of these things?

Mr. Sammartino: Formal request has been made under the FOIA and it's being processed.

The Court: And how long is this process going to take?

Mr. Sammartino: One moment, your Honor.

(p. 15) (Pause)

The Court: Sixty days? Let me just cut this short by saying that I expect the Government will make every effort to get to me and to Mr. Cicilline copies of the documents that they made available to the defendants in this action, before next Tuesday.

Mr. Sammartino: Made available to the plaintiff.

The Court: I didn't mean to make you speechless.

Mr. Sammartino: I'm sorry. I thought you said to the defendants.

The Court: To the plaintiff. I misspoke perhaps because Mr. Cicilline is usually on the other side. I don't usually see him sitting on that side. This is a collecting process. This is not now a matter of editing. This is simply collecting what you gave to somebody else, making another copy of it and getting it to us.

Mr. Sammartino: Thank you, your Honor.

The Court: I should like to see it before next Tuesday. It would help me very much in finding out precisely what I'm deciding.

Mr. Sammartino: We'll do our best to have it for Tuesday your Honor.

The Court: Pardon me?

Mr. Sammartino: We'll do our best to have it for Tuesday.

The Court: Well, I'm sure you can succeed. Is there (p. 16) anything further?

Mr. Cavanagh: Your Honor, for the record, I would ask a stay of the order you're entering today until the appeal to the First Circuit.

The Court: Well, your request is denied, and you can see what you can do with that. If there is any way that I can help you to get up there, I will do it, I assure you, but I think we need some time to study this problem. Anything further? The Court will be in recess.

(Court Reporter's Certification Omitted)

5

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

RAYMOND J. PATRIARCA, Individually and as Administrator of the Estate of Raymond L.S. Patriarca	CA 85-0707B
Plaintiff	
v	
FEDERAL BUREAU OF INVESTIGATION, ET AL	Providence, R.I. 19 November 1985
Defendants	

TRANSCRIPT OF HEARING
BEFORE CHIEF JUDGE FRANCIS J. BOYLE

APPEARANCES:

FOR THE PLAINTIFF: JOHN CICILLINE, ESQ.
165 Atwells Ave.
Providence, R.I., 02903

FOR THE DEFENDANTS: MATT MEDEIROS, ESQ.
JOE CAVANAGH, ESQ.
EVERETT SAMMARTINO, ESQ.

Court Reporter: ALFRED GALLUCCI
301 Federal Courthouse
Providence, R.I., 02903

(p. 1) 19 NOVEMBER 1985

The Court: This action was filed in this court on November 8, 1985, at 5:40 p.m., and following a conference in chambers on November 13, 1985, a restraining order was entered to the extent that the defendants severally and individually are restrained from distributing, disseminating and otherwise publishing the logs or airtels or reports thereof generated as a result of the electronic surveillance conducted at 168 Atwells Avenue, between March of 1962 and July of 1965, as they relate to Raymond J. Patriarca, pending hearing at 10:00 a.m. on Friday, November 15, 1985. At that time the Court heard the parties on the record and on the basis of a show cause order directed to the defendants to show cause why the restraining order should not be continued. At that time, the Court, after hearing, continued the restraining order for hearing on preliminary injunction today.

Normally, a preliminary injunction is heard only after filing of an answer, but I take it that the parties are not in disagreement with respect to this procedure at this time.

Additionally, because of the constitutional issues that are involved here, and the admonitions of the United States Supreme Court, where restraint relates to publication, (p. 2) distribution of information, that the Court may only defer for a short period of time before making a decision with respect to the question of the right to publish. That, the Court has done in this instance. A restraining order was issued to maintain the status quo, which is perfectly appropriate for purposes of a restraining order, until the Court had some time to consider the rather unique and, to say the least, interesting and further crucial issues that are involved in this case.

This issue has been described as recently as two weeks ago in an address by Arthur Miller of Harvard Law School, at the First Circuit conference as being the imminent constitutional clash that is facing the Supreme Court at this point in time, that is, the relationship between the Fourth Amendment right of privacy, and the First Amendment right of publication. I won't deliver Professor Miller's address to you. It took about an hour. But, in any event, there is some thinking at least in academic circles that this specific issue is a matter of real concern, and I'm satisfied it's a matter of real concern. It's a matter that ought to have available to it the ordinary course of study that decisions of this court are submitted to, that is, in normal circumstances the Court at this point would reserve decision and spend two months writing an opinion, (p 3) which would probably be not quite as disjointed as the Court's opinion might be this morning from the bench.

In any event, the parties are entitled to a prompt decision on the issue, and I intend to give the best that I

can under the circumstances, having in mind that this is an important question.

The evidence is not substantially disputed, and much of it is found in the Court of Appeals decision in the First Circuit in the action of the Providence Journal Company v the Federal Bureau of Investigation, in which the Court of Appeals, as I read that decision, held that the policy expressed by the Congress in the Freedom of Information Act, with respect to privacy materials, would be applied, even though the interception here was prior to the time that the act became effective, that is, as I read Judge Coffin's opinion, it expresses the principle that Congress has stated what has always been the principle and that therefore the expression of it, the subsequent expression of it, does not change the fact that privacy rights of individuals are going to be respected, and so as I read his opinion, it is that the privacy rights of Raymond L.S. Patriarca, which were implicated, should not be violated by publication of material that was involved in that case, and which is apparently the same materials (p. 4) involved in this case.

Additionally, there is evidence before this Court that all of the material in the possession of the Government has not yet been disclosed to members of the public, including the press, so that some material remains in the Government's possession. The further evidence is that some publication has already taken place with respect to Raymond J. Patriarca, arising out of the documents furnished by the Government by entities which were not involved in the restraining order that was issued and the restraining order that's in effect at this point in time.

Although the complaint appears to be broadly involving materials concerning Raymond J. Patriarca and Raymond L.S. Patriarca, it is stipulated that the thrust of this action relates to information, statements to, by Raymond J. Patriarca only.

The complaint alleges, and it is not seriously disputed, that this information—and it's stipulated, that the information obtained by the Government was obtained illegally in violation of the Fourth Amendment to the Constitution of the United States. The information at this time consists of logs and airtels prepared by FBI agents who conducted the surveillance, the original tapes having been reused and therefore the original recordings having (p. 5) been destroyed in the process. In this connection the Government has furnished this morning to the Court and to the plaintiff, copies of the materials which have been delivered to the Providence Journal Company.

The Court has been aided in its efforts by two Law Review articles which bear generally on the subject at hand, one First Amendment standards for subsequent punishment of dissemination of confidential government information which is found at 68 California Law Review beginning at Page 83, and the other Incursions on Access: "Privacy" versus the First Amendment, which appears in Volume 15 of the Toledo Law Review, beginning at Page 641.

There is no decision of the United States Supreme Court which specifically relates to this issue, that is, none has been found by counsel, nor has the Court been able to find one, which this specific issue is dealt with.

One of the requirements of a preliminary injunction is that the party seeking the injunction establish a likeli-

hood of success. That likelihood of success has been described by the Court of Appeals in the First Circuit in Auburn News v the Providence Journal, as one that looms large in terms of whether or not preliminary injunction should be granted. And it is that aspect of it that I will address. Again, there are no Supreme Court cases which decide this issue. (p. 6) There are, however, some straws in the wind, which is the only source available to this Court at this time in predicting what the United States Supreme Court might do with this question when, as and if it does decide it. That is my task this morning, and it is one that is certainly not 100 percent accurate, but based on prior decisions of the Supreme Court, it may be possible to make a prediction as to what the Supreme Court would do with this issue if faced with it.

The two, it seems to me, most significant authorities suggesting which way the wind is blowing in this area, the case decided in 1975, Cox Broadcasting Company v Cohen [sic], and which is reported in 420 U.S., beginning at Page 469, and Landmark Communications, Incorporated v Virginia, a case that is a 1977 case, reported at 435 U.S., beginning at Page 829.

In Cox, the State of Georgia, by statute, made it a misdemeanor to broadcast a rape victim's name, and the defendant Cox Broadcasting Company's reporter obtained the name of the rape victim from the indictment, which was a public document, and published the name, and as a result, the victim's father brought an action based on the Georgia statute making it a misdemeanor to broadcast that person's (p. 7) and in this case the Supreme Court reached out, really, to decide the question, because there's some procedural matters that happened in the Georgia

Supreme Court which I'm not going to go into, but in any event, in that case, the Supreme Court held the State may not, consistently with the First and Fourteenth Amendments, impose sanctions on the accurate publication of a rape victim's name obtained from judicial records that are maintained in connection with a public prosecution and that themselves are open to public inspection. In the course of that opinion, the court discussed the right of privacy at some length.

The right of privacy probably derives from a law review article that was published in 1890 by the Harvard Law Review written by Professors Warren and Brandeis. Interestingly enough, the occasion upon which the law review article was written was that Mrs. Warren was quite upset with the Boston press because of the way the Boston press was covering her parties that she had given, and so her husband, later to be a Justice of the Supreme Court, wrote a law review article entitled The Right to Privacy, 4 Harvard Law Review 193. Having in mind the premise upon which this was written, some of the language is of some interest. In part it says this: "The intensity and complexity of life attendant upon advancing civilization—(p. 8) this is written in 1890, something a little less than 100 years ago—have rendered necessary some retreat from the world and man, under the refining influence of culture, has become more sensitive to publicity, so that solitude and privacy have become more essential to the individual, but modern enterprise and invention have through invasions upon his privacy, subjected him to mental pain and distress far greater than could be inflicted by mere bodily injury, nor is the harm brought by such invasion confined to the sufferings of those who may be made the subjects

of journalistic or other enterprise. In this, as in other branches of commerce, the supply creates the demand. Each crop of unseemly gossip thus harvested becomes a seed of more, and in direct proportion to its circulation results in a lowering of social standards and of morality. Even gossip apparently harmless when widely and persistently circulated is potent for evil. It both belittles and perverts. It belittles by inverting the relative importance of things, thus warping the thoughts and aspirations of a people. When personal gossip attains the dignity of print and crowds the space available, matters of real interest to the community, what wonder that the ignorant and thoughtless mistake its relative importance, ease of comprehension appealing to that weak side of human nature, which is never wholly cast down by (p. 9) the misfortunes and frailties of our neighbors, no one can be surprised that it usurps the place of interest, it embranes, capable of other things. Triviality destroys it once robustness of thought and delicacy of feeling. No enthusiasm can flourish, no generous impulse can survive under its blighting influence.

It would seem to be pretty clear in light of that language that it was written in the 1890s. Thus the right of privacy. It had been recognized at common law in most states. The history of that right in this state has been somewhat checkered. There is, as I recall, one case, Cherry and Webb, which denies the existence of a common law right of privacy, but more of that later.

In Cox, the Court said: "There are impressive credentials for a right of privacy—this is at Page 489—but we should recognize that we do not have at issue here an action for the invasion of privacy involving the appropriation of one's name or photograph, a physical or other

tangible intrusion into a private area, or a publication of otherwise private information that is also false although perhaps not defamatory. Because the gravamen of the claimed injury the publication of information, whether true or not, disseminates (p. 10) of which is embarrassing or otherwise painful to an individual, it is here that claims of privacy most directly confront the constitutional freedoms of speech and press. The face-off is apparent, and the appellants urge upon us the broad holding that the press may not be made criminally or civilly liable for publishing information that is neither false nor misleading but absolutely accurate, however damaging it may be to reputation or individual sensibilities.

In sum, what the Court did in Cox was to hold the statute unconstitutional, in violation of the First Amendment. Thus, we do get some weighing of free speech and privacy rights, although without a decision on that specific point.

The second case is Landmark Communications v Virginia, in which a newspaper published items that were confidential in a jury inquiry and review commission proceeding, and the court says at 435 U.S. 837: "The narrow and limited question presented, then, is whether the First Amendment permi [sic] the criminal punishment of third persons who are strangers to the inquiry, including the news media, for divulging or publishing truthful information regarding confidential proceedings of the Judicial Inquiry and Review Commission. We are not here concerned with the (p. 11) possible application of the statute to one who secures the information by illegal means and thereafter divulges it. We do not have before us any constitutional challenge to a state's power to keep the commission's

proceeding confidential or to punish participants for breach of this mandate."

After discussion of New York Times v Sullivan, the Virginia State Board of Pharmacy v Virginia Citizens and Lindmark [sic] Associates v Willenborough [sic], the court says this: "We conclude that the publication Virginia seeks to punish under its statute lies near the core of the First Amendment, and the commonwealth's interest advanced by the imposition of criminal sanctions are insufficient to justify the actual and potential encroachment on freedom of speech and of the press which followed therefrom. Citing Buckley v Valeo."

Going on Page 839: "The Commonwealth concedes that without question the First Amendment seeks to protect the freedom of the press to report and to criticize judicial conduct." And so on. "As we read Cox, it does not provide the answer to the question now confronting us. Our holding there was that a civil action against a television station for breach of privacy could not be maintained consistently with the First Amendment when the station had broadcast only (p. 12) information which was already in the public domain. The broader question—whether the publication of truthful information withheld by law from the public domain is similarly privileged—was not reached and indeed was explicitly reserved in Cox. We need not address all the implications of that question here, but only whether in the circumstances of this case Landmark's publication is protected by the First Amendment."

Going on to Page 841: "It can be assumed for purposes of decision that confidentiality of Commission proceedings serves legitimate state interests. The question, however, is whether these interests are sufficient to justify

the encroachment on First Amendment guarantees which the imposition of criminal sanctions entails with respect to nonparticipants such as Landmark."

The court went on to say that in substance, the standard upon which such information may be retained is the clear and present danger standard, that the danger must not be remote or even probable. It must immediately imperil. That at Page 845.

It seems to me one can draw from those two cases, at least, the inference that when faced with the issue of whether or not the absolute prohibition of the Fourth Amendment and balance applied to the First, would limit (p. 13) an exercise of the First Amendment right, that the Supreme Court is likely to determine that that would not occur. It is likely that the Fourth Amendment prohibition would yield to the First, in the circumstances.

Since one of the requirements is that the plaintiff show a likelihood of success, that it seems to me that the likelihood is just the opposite at this point in time, that it is likely that the plaintiff would not succeed on the Fourth Amendment privacy issue.

There are other issues in this case. With respect to the news organizations, there is a contention that under Title 3, the defendants are liable. Let me say that Title 3 in the first place relates only to an action for damages. This is 18 USC 2520 et seq. Secondly, it relates to interceptions which occurred on or after June 19, 1968. It is agreed in this instance that interceptions occurred prior to that date.

In Zerilli v the Evening News Association, the District of Columbia Circuit, decided in 1980, reported at 628 F.2d

217, the Court of Appeals for the D.C. Circuit decided, and I think correctly, that Congress intended only to apply Title 3 to actions arising from communications which are in violation of that law, and that since the communications here occurred prior to 1968, that Title 3 does not apply. In any event, it doesn't help the plaintiff with respect (p. 14) to his injunctive claim. Congress has limited the remedy to one of damages, and certainly Congress knew how to provide for an injunction, if that's what Congress had in mind under this act.

Additionally, the court in Zerilli discusses the Bivens doctrine, and limits that to federal officials, holds that a newspaper, in this case the Detroit Free Press, could not be held liable under Bivens, and does state in some dicta, at Page 223: "Assuming without deciding that private parties may in some circumstances be held liable under Bivens for conspiring with federal officials, we believe there are three special factors that, taken together, preclude us from imposing such liability in the present case." I'm not sure I agree with what follows thereafter, with respect to the central thrust of the Fourth Amendment. On that subject, the exclusionary rule that we all know so well is just a part of the Fourth Amendment rights that are involved. The exclusionary rule grew up from a kind of dilemma that the courts faced in terms of whether or not a defendant who is presumed—constitutionally presumed to be innocent, may be found guilty on the basis of evidence which the Government obtained illegally. The alternatives that were suggested were a damages action against the police officials involved, or (p. 15) exclusion of the offered evidence, and the purpose of exclusion or

damages being to discourage police officials from violating the constitutional rights of people who were involved in or suspected of crimes. The rationale of the exclusionary rule, it does not seem to me, applies at all to this situation. Here, we're dealing with a situation in which the Government admittedly has illegally obtained certain information and then proceeds knowing it to be illegal, then proceeds to disseminate it. The Government certainly is the last entity in our society that one could expect not able to respond in damages for an action brought against it. Indeed, if the Government is insolvent, we are all in great difficulty. So that the kind of rationale that supports the exclusionary rule doesn't really apply in an instance in which the Government's involved as a defendant.

There are other rights which are involved here, which really haven't been mentioned. To begin with, the right of privacy is a matter generally of state law, and Rhode Island does have a statute which guarantees the right of privacy. That statute is Section 9-1-28.1, adopted by the General Assembly in 1980, and it may be that this statute applies to these circumstances. The statute says it is the policy of this state that every person in this (p. 16) state shall have the right to privacy, which shall be defined to include any one of the following rights individually: 3. The right to be secure from unreasonable publicity given to one's private life, (a) in order to recover for a violation of this right it must be established that (1) there has been some publication of a private fact; (2) the fact which has been made public must be one which would be offensive or objectionable to a reasonable man of ordinary sensibilities; (b) the fact which has been disclosed need not be of any benefit to the discloser of such fact.

Now, that's a pretty broad remedy. That section goes on to provide for relief in an action at law, suit in equity or any other appropriate proceeding, however, since this section specifically requires publication before the action can be brought, it seems to me that the concept of enjoining publication is excluded by the statute itself. So that it doesn't seem to me that an injunction can be predicated on the basis of the statute, but it does seem to me that very clearly under state law, and on a broad base, unreasonable publicity given to one's private life, is now the subject of recovering damages in the State of Rhode Island. However, I do not find this to be a basis for injunctive relief at this point in time.

(p. 17) In sum, with respect to the action against the defendants Providence Journal and WJAR Television 10, I am satisfied that it is more likely than not that the Supreme Court would hold that an injunction does not lie under the Fourth Amendment to the United States Constitution. What other remedies might be available, I think the injunctive remedy in these circumstances is probably not available. This is only a prediction. It is not a determination, a final one. This is for preliminary injunction only.

It seems to me that if there isn't, there certainly ought to be a damages action against the Government under Bivens for the publication of information that is illegally obtained, in violation of the Fourth Amendment. Even though there are no authorities for this proposition, the law has to make some sense, and to have a Fourth Amendment right which could be violated at liberty by the Government, and without any redress, would seem to be a somewhat ridiculous situation, that people, citizens,

have no protection from a Government which decides to make the most serious intrusion upon the privacy of life, and to publish that detail ought to be in some fashion responsible for what it does. I am satisfied that even though there are no cases, that there is a probability of success with respect to the question of whether or not a plaintiff (p. 18) in these circumstances may enjoin any further distribution by his Government, of information concerning him, which was obtained from him illegally. There are no cases. There is no case law in this area, but it seems to me it's simply a matter of common sense, that that information should not be distributed, at least until a hearing on the merits. I frankly can find no interest to the Government that's involved or implicated in distributing that information at this point in time, that might overcome the interest of the plaintiff in this case, in maintaining Fourth Amendment rights.

The Court will vacate the restraining order previously entered, deny the preliminary injunction with respect to the defendants, the Providence Journal Company and WJAR Television 10, and grant the injunction with respect to the Federal Bureau of Investigation and the United States Department of Justice. All parties may have an exception. That injunction is prospective only. Now what's this?

Mr. Cicilline: It's an order.

(Handed to the Court)

The Court: Mr. Sammartino, have you got a copy of this.

Mr. Sammartino: Yes, I do. If the Court please, we move at this time that the memorandum filed by the Government be made a part of the record.

(p. 19) The Court: It may.

Mr. Sammartino: In this case.

The Court: Certainly. How about this order?

Mr. Cavanagh: Your Honor, the final line of the order as they relate to Raymond J. Patriarca, what I'd like to ask the—

The Court: You're not even interested in this, are you? This isn't your problem at all.

Mr. Cavanagh: Well, if we're not able to get this information—

The Court: Well, I don't know if you're asking for it. Or what you're asking for. And you're not restrained.

Mr. Cavanagh: Okay, so I can't ask you this question.

The Court: I know what the question is that you're going to ask, but it doesn't seem to me you're involved in it. I have a situation here where the First Circuit has already held, as I read it, that there are privacy interests indicated in these documents. What do you want? You want to know what as they relate to Raymond J. Patriarca means.

Mr. Sammartino: Correct.

The Court: Well, Mr. Cicilline.

Mr. Cicilline: Everett wants to know what I mean by as they relate to Raymond J. Patriarca? Any log or

airtel that involves a discussion between Raymond L. S. Patriarca (p. 20) and Raymond J. Patriarca.

The Court: I don't think they're listening at this point, and it may be important that they hear it. Do you want to finish that conference and then—

Mr. Sammartino: I'm sorry, your Honor.

The Court: You were saying any record of a discussion.

Mr. Cicilline: Between the father and the son, or by the father about the son.

Mr. Sammartino: Basic objection I have to the order, your Honor, is that I believe it should read—although I object to it generally, of course, that as they relate to Raymond J. Patriarca, in conversation in which he participated.

The Court: Well, I haven't had a chance to read the material at this point, but let us suppose that there is a circumstance in which A says something about Raymond J. Patriarca, do you think that that can be disclosed?

Mr. Sammartino: Under the circumstances, he not being on the premises, I can't see how it could relate to an invasion of his privacy.

The Court: Well, of course, I can't, either, without looking at the precise statement.

Mr. Sammartino: A statement per se made about an individual doesn't necessarily invade their privacy.

(p. 21) The Court: That's exactly my point.

Mr. Sammartino: That's what I'm saying. I'm saying, in other words, if Raymond J. Patriarca was on the

premises talking, et cetera, he has no expectation of privacy.

The Court: Let me say that as—I gather this means to statements made to, by or about, is that right?

Mr. Cicilline: Yes, your Honor.

The Court: And if the Government has any problem with that, you can let me know.

Mr. Sammartino: We do have a problem with it, your Honor. I believe it only should state as to cases in which Raymond J. Patriarca was a participant.

The Court: All right. Then if you have documents that are like that, I'll take a look at them. Now it seems to me also that this order ought to read they are hereby preliminarily enjoined from further distributing, disseminating and so on. And this relates only to the defendants FBI and the Department of Justice. All right, I have entered the order. Are you going to get me an order, Mr. Cavanagh?

Mr. Cavanagh: Please, your Honor?

The Court: Are you gong to get me an order denying the preliminary injunction?

Mr. Cavanagh: Yes, we'll present one to you.

The Court: Anything further?

Mr. Cicilline: No, your Honor.

The Court: All right, the Court will be in recess.

(Court Reporter's Certification Omitted)

6

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

RAYMOND J. PATRIARCA	)	
	)	
	)	C.A. No.
vs.	)	85-0707 B
	)	
FEDERAL BUREAU OF INVESTIGATION, ET AL	)	

ORDER

In the above-captioned matter, it is hereby ordered that the temporary restraining order, dated November 13, 1985, a copy of which is attached hereto, is vacated with respect to defendants Providence Journal Company and WJAR-TV Television Ten, Inc.

ENTERED as an Order of this Court on the ..... day of November, 1985.

By Order:
Carol A. Boday
Deputy Clerk
12/13/85

ENTER:

Francis J. Boyle
Chief Judge, Boyle, J.
Dec. 13, 1985

7a

THE PROVIDENCE JOURNAL-BULLETIN
75 Fountain Street, Providence, R.I. 02902

September 26, 1984

Freedom of Information Unit
Federal Bureau of Investigation
Boston, Mass.

Dear Sirs:

I hereby request copies of or access to transcripts and summaries—and any tapes extant—of conversations recorded at the Atwells Avenue office of Raymond L. S. Patriarca in Providence, R.I. during the period March 6, 1962 through July 12, 1965 and any other dates for which such conversations were monitored.

As you know, Patriarca died in July of this year.

Very Truly Yours,

/s/ Robert Kramer
Robert Kramer
Reporter
Providence Journal
75 Fountain St.
Providence, R.I. 02902

7b

U.S. DEPARTMENT OF JUSTICE
Federal Bureau of Investigation
617-742-5533 X 247

In Reply, Please Refer to File No.

John F. Kennedy Federal Building
Government Center
Boston, Massachusetts 02203
October 9, 1984

Robert Kramer
The Providence Journal-Bulletin
75 Fountain Street
Providence, Rhode Island 02902

Dear Mr. Kramer:

This acknowledges receipt of your Freedom of Information request dated September 26, 1984 for access to tapes of conversations recorded at the office of Raymond L. S. Patriarca.

Please be advised that your request will be processed as soon as possible and you will be advised of the results.

Very truly yours,

JAMES W. GREENLEAF
Special Agent in Charge

By: /s/ Roger J. Corke
ROGER J. CORKE
Principal Legal Advisor

7c

U.S. DEPARTMENT OF JUSTICE
Federal Bureau of Investigation

In Reply, Please Refer to File No.

John F. Kennedy Federal Building
Government Center
Boston, Massachusetts 02203

December 5, 1984

Robert Kramer
The Providence Journal-Bulletin
75 Fountain Street
Providence, Rhode Island 02902

Dear Mr. Kramer:

This is in further response to your Freedom of Information Act request for access to transcripts and summaries of conversations recorded at the Atwell Avenue office of Raymond Patriarca.

After consulting with FBI Headquarters your request is being forwarded to Headquarters for processing and they will correspond directly with you concerning the possible release of any information.

Very truly yours,

JAMES W. GREENLEAF
Special Agent in Charge

By: /s/ Edward W. Ludemann
EDWARD W. LUDEMANN
Assistant Special Agent in Charge

7d

U.S. DEPARTMENT OF JUSTICE
Federal Bureau of Investigation

Washington, D.C. 20535

Jan. 16, 1985

Mr. Robert Kramer
The Providence Journal-Bulletin
75 Fountain Street
Providence, Rhode Island 02902

Dear Mr. Kramer:

Your recent Freedom of Information Act (FOIA) request to our Boston Office for access to transcripts and summaries of conversations recorded at the Atwells Avenue office of Raymond Patriarca, was referred to FBI Headquarters for handling.

Following a preliminary review of documents pertaining to your request, it is estimated that duplication costs of approximately $700 may result, representing a charge of 10¢ per page. Department of Justice regulations (Title

28, Code of Federal Regulations, Sections 16.10 and 16.46) require notification to a requester when anticipated charges exceed $25. This letter constitutes such notification.

Accordingly, before taking action, we will await receipt of written notification indicating your willingness to pay fees of approximately $700 in connection with the processing of your request. If you want to reduce the scope of your request to meet your needs at a lower cost, please advise this office at your earliest convenience.

We must caution, however, that your indication of approval and consent to incur such fees will not necessarily result in the entire contents of our records being disclosed to you, since we are guided by the provisions of the Freedom of Information Act (Title 5, United States Code, Section 552) and the Privacy Act of 1974 (Title 5, United States Code, Section 552a) in disclosing material from our records. No duplication fees will be assessed for documents not released.

No payment should be submitted at this time.

Your request has been assigned number 255,155 which you are asked to use in any further correspondence concerning this matter.

Sincerely yours,

/s/ James K. Hall
James K. Hall, Chief
Freedom of Information-
Privacy Acts Section
Records Management Division

7e

THE PROVIDENCE (Logo) JOURNAL-BULLETIN
75 FOUNTAIN STREET, PROVIDENCE, R.I. 02902

January 23, 1985

James K. Hall, Chief
Freedom of Information-
Privacy Acts Section
FBI
Washington, D.C.

Dear Mr. Hall:

Regarding your letter dated January 16, 1985, we are willing to pay the cost of duplication at 10¢ per page up to $700 for copies of material related to my Freedom of Information Act request (255,155) of September 26, 1984.

I understand that this is an approximate figure and could be exceeded.

Sincerely yours,

/s/ Robert Kramer
Reporter

7f

FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535
February 22, 1985

Mr. Robert Kramer
The Providence Journal-Bulletin
75 Fountain Street
Providence, Rhode Island 02902

SUBJECT OF REQUEST: Raymond L. S. Patriarca
Recorded
Conversation
Atwells
Avenue

FOIPA NO. 255,155

Dear Mr. Kramer:

This is in further response to your Freedom of Information/Privacy Acts (FOIPA) request(s). Information pertaining to your request has been set forth below in appropriate paragraphs.

[ ] The additional data requested from you has been received.

[X] We have received your letter expressing your willingness to pay fees approximately $700.00.

[ ] We have received your check in the amount of ..... dated .....

[ ] We are currently conducting a search of indices to our central records system files at FBI Headquarters to determine if we have the records you are seeking. Upon completion of this review, we will advise you.

[ ] We have located documents which may pertain to your request(s), and we will assign them for processing soon.

[X] As a result of the large number of FOIPA requests received by the FBI, we may encounter some delay in processing your request(s). The FBI has allocated substantial resources, including manpower, to insure that delays in responding to FOIPA requests are minimized. We solicit your understanding and assure you that we will process your request(s) as soon as possible.

Your continued patience will be appreciated.

[ ] See Continuation Page for additional information.

Sincerely yours,

/s/ James K. Hall
Chief
Freedom of Information-
Privacy Acts Section
Records Management Division
202 324-3000

Department of Justice
Bureau of Investigation

Washington, D.C. 20535

June 13, 1985

Request: Raymond Patriarca
Transcripts

255,155

7g

93 (Rev..8-26-82)

U.S. DEPARTMENT OF JUSTICE
(SEAL) FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

June 13, 1985

Subject of Request: Raymond Patriarca
Transcripts

FOIPA No. 255,155

Mr. Robert Kramer
The Providence Journal-Bulletin
75 Fountain Street
Providence, Rhode Island 02902

Dear Mr. Kramer:

Reference is made to our letter of 2-22-85. The records which you requested have been processed, and the documents are available for release.

Pursuant to Title 28, Code of Federal Regulations, Sections 16.9 and 16.46, there is a fee of ten cents per page for

duplication. Upon receipt of your check or money order, payable to the Federal Bureau of Investigation, these documents will be forwarded to you.

(To insure proper identification of your request, please return this letter or include the above referenced FOIPA request number with your payment.)

Number of pages: 1463 Amount due: $146.30

[X] See Continuation Page for additional information.

Sincerely yours,

/s/ James K. Hall/lcm
Chief
Freedom of Information-
Privacy Acts Section
Records Management Division

8a

No. 85-707

DEFENDANTS' EXHIBIT C
FOR IDENTIFICATION

NEWS CENTER 12/WPRI-TV12
PROVIDENCE, R.I. 02914

Slug Patriarca Tapes/Jr.
Date 11-14-85
Total Time
Writer white

In 1972, Patriarca was asked his opinion of the book, The Godfather.

2:36 .....

In—Well, in my opinion
3:00 out—with it I guess

.....

That was five years after he learned the FBI had illegally bugged the Providence office from 1962 to 1965.

Joseph Barboza worked for Patriarca. The man nicknamed the animal referred to Patriarca's operation as the Office. He describes what he did to Patriarca's enemies.

.....

ir—I stabbed em

out—approcal of the offi

.....

The FBI transcripts obtained by News Center 12 show that Patriarca was a crime czar whose influence and retribution reached to the top levels of the mafia.

But it is the reference to his son—the 40-year-old—Raymond Junior Patriarca—that have precipated the legal controversy.

According to the transcripts:

"Ray says his boy flunked the college board exams."

"Ray says his boy has been getting refusals of admittance to colleges . . . Claims those refusals are because of his family's background."

"Ray tells Ray Jr. that when he gets married to marry an Italian girl as she will stand by you when you're in trouble, or won't call the police if you rap her in the mouth."

"You have to be a man to rob and that he never robbed any poor people in his life."

8b

No. 85-707

DEFENDANTS' EXHIBIT D
FOR IDENTIFICATION

NEWS CENTER 12/WPRI-TV12
PROVIDENCE, R.I. 02914

Slug Patriarca Tapes
Date 11-15-85
Total Time
Writer White

The junior Patriarca was 17 year old when the FBI illegally bugged his father's Providence office.

The first entry in which the young man was named came on March 3, 1962:

"Talked about Ray's family and his 17-year old biy [sic] who is planning to go to BU or BC—near home. Going to be a lawyer. Things are quiet in Boston." Later there are thises [sic] comments about the Junior Patriarca.

". . . With all this publicity, what school will take him . . . Ray says if he can't get into college, he'll put him up in business."

"Ray wants his boy to get into college on his own merits."

The junior Patriarca, now 40 years old, has not seen the transcripts, which his lawyer says raises a unique freedom of the press issue.

.....

in—this is a peculiar
out—to be distributed.

.....

News organization that have sought the transcripts for almost 20 years have been more interested in the senior

Patriarca, who felt he was persecuted by the media and the government.

2:08 .....

in—if I didn't have . . .
out—America what's going on.

2:25 .....

8c

No. 85-707

DEFENDANTS' EXHIBIT E
FOR IDENTIFICATION

NEWS CENTER 12/WPRI-TV12
PROVIDENCE, R.I. 02914

Slug
Date
Total Time
Writer

Junior Patriarca was born on DATE February 24, 1945 the only child of Raymond L.S. Patriarca.

The illegal bugging of the senior Patriarca's office from 1962 to 1965 gives a glimpse of what life was like for his son.

When Junior was 18 years old, his father tells a visitor he has . . . "tried to keep his brother (Joseph) clean like he is trying with your Raymond."

Later, when junior calls his father from college about a young man—who lives with a priest—who has befriended the young

the senior Patriarca.

But his hopes were dashed for a variety of reasons.

One reason was Illiaro Zannino, known as Larry Baioni, who swung his support to Junior Patriarca.

Law enforcement officials say they are still waiting to see just how strong a crime boss Junior will be.

"RLP had a little background check on the priest. RLP warns his son this boy may be a plant by the feds."

Twenty years later, when the senior Patriarca was rushed dying to a hospital, the way apparently had been paved for his son—then 39-years-old, to take over the mob.

The FBI says that Boston's alleged crime boss Gennaro Gerry Anguilo dearly wanted to replace

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8d

HARTFORD COURANT SUNDAY, SEPT. 22, 1985

FBI LOGS DISCLOSE RANGE OF
PATRIARCA'S INFLUENCE

By Bruce DeSilva
Boston Bureau Chief

PROVIDENCE, R.I.—Raymond L.S. Patriarca, the New England crime boss who died in July 1984, quietly supported his own candidates for public office, secretly bought into race tracks and country clubs, and exerted influence in police stations, judges' chambers, and even a governor's office, long-secret FBI documents show.

The documents—notes written by FBI agents who eavesdropped on Patriarca for more than three years during the 1960s—also disclosed for the first time the private side of a notorious criminal who had long hidden behind a string of "no comments" and Fifth Amendment pleas.

The documents portray Patriarca at the height of his powers—after his consolidation of a criminal empire that

stretched from Rhode Island to Maine but before his organization was weakened by a series of criminal indictments in the 1980s.

News organizations have unsuccessfully sought the documents for two decades. The FBI kept the documents from the public on the grounds that their release would violate Patriarca's right to privacy.

After Patriarca's death, The Courant petitioned for release of the documents on the grounds that the privacy issue was moot. Last Wednesday, the FBI released 2,482 pages of the documents to The Courant. More documents are expected to be released later this year.

During the 1960s, the documents show, a stream of supplicants paraded before Patriarca in his first-floor office at 138 Atwells Ave. in Providence's predominantly Italian Federal Hill neighborhood. Many brought presents: a gallon of spaghetti sauce, a fur coat, a diamond ring.

The supplicants included political candidates asking for his blessing, tavern owners seeking his help in getting liquor licenses, bookies asking that he settle disputes over money and even a young girl asking for advice on a marriage proposal.

Patriarca, the documents show, usually thought he could help or that he knew someone who could. One person Patriarca felt he could call on for a favor, the documents show, was the late John A. Notte Jr., a North Providence, R.I. Democrat who was governor for a two-year term beginning in 1961.

On Sept. 24, 1962, the FBI documents show, Patriarca was overheard discussing the difficulty his son, Raymond

J. Patriarca, was having in changing a course at the University of Rhode Island. Patriarca, the documents show, stated that an unnamed man had just talked with the governor and that the governor was "standing by" to hear what course the younger Patriarca wanted to take.

Although Notte is not named in the documents, he was governor of Rhode Island at the time. The younger Patriarca, known as Ray Junior, succeeded his father as New England crime chief last year, federal authorities say.

On June 27, 1962, the FBI documents show, the elder Patriarca told an associate that it "looks good" for an unnamed man to get reinstated at "the track." Patriarca, the documents show, said he would handle the matter personally by going "directly to the governor." The name of the track, the governor and the state involved are not given.

Despite the power he wielded, the Patriarca of the 1960s was often an unhappy and desperate man, the documents indicate.

Although only in his early 50s, he was in frequent pain from a series of illnesses, including diabetes and heart trouble.

While he had a regular "girl-friend" and showed delight at an offer of being "fixed up" with a "showgirl," he loved his wife, Helen, and was in agony over her long and unsuccessful bout with cancer. Once, in discussing his wife with an associate, he broke down and cried.

Patriarca profited handsomely from illegal gambling and loan-sharking (issuing of loans at illegally high rates). Eavesdropping agents often heard Patriarca count-

ing large sums of cash. However, he was enraged that the legitimate businesses in which he invested were constantly losing money.

And he was always looking over his shoulder for FBI agents, fearful of "stool pigeons," and convinced that his telephones were tapped. Occasionally, the documents show, he complained that his life was "a prison."

Patriarca frequently cursed the FBI, but reserved his most venomous hatred for Robert F. Kennedy, who pursued organized crime figures in his capacity as U.S. attorney general. Several days after the attorney general's brother, President John F. Kennedy, was assassinated in Dallas, Patriarca was overheard commenting that it was too bad the assassins hadn't "nailed" Robert Kennedy instead.

Ironically, as Patriarca expressed paranoia about being watched and followed, the FBI was listening to his conversations daily through an electronic listening device planted in his Federal Hill office.

The agents, who planted the device without obtaining a warrant, eavesdropped on Patriarca daily from March 2, 1962 to July 12, 1965. Although the surveillance was later ruled illegal, and thus could not be used in court, federal authorities say it provided them with invaluable intelligence about the scope of Patriarca's empire.

The released documents consist of "surveillance logs" on which FBI agents wrote notes on what they overheard. About 20 percent of the notes have been deleted by the FBI, primarily to protect the privacy of persons the agency says are "not known to be dead."

Deletion of names makes it impossible to substantiate or disprove persistent rumors that the surveillance documents contain the names of persons who continue to hold prominent public offices in Rhode Island and Massachusetts.

At the time that the eavesdropping took place, Patriarca, who stood 5-feet-6, was a middle-aged man with jet black hair slicked straight back. He had a hawk-like nose, and a wide mouth that usually gripped a nickel cigar. He usually wore conservative suits with white socks.

He was to die of heart failure in a Rhode Island hospital more than 20 years later while under indictment on several state and federal charges, including accessory to murder. Until the day he died, he maintained he was a simple businessman unfairly persecuted by the law.

New England journalists and the public have long speculated about the extent of Patriarca's influence during his 30-year reign as the region's crime boss. The FBI logs, in some cases, exceed even the wildest speculations.

The documents show that the New England crime boss was deeply involved in the region's electoral politics.

On May 5, 1962, Patriarca was overheard saying he was going to defeat a candidate for public office so there was no point in talking to him. "If Ray does talk to him," the surveillance log reads, "it will be to warn him that this is his last chance to play ball."

On Aug. 2, 1962, the log shows, Patriarca seemed to be "making a deal" with a political candidate. "Ray [meaning Patriarca] says if his man wins," the log reads, "he will fullfill any promises to this man." The log says Pa-

triarca hoped that an unnamed candidate would not win because "he will put out of business guys like Ray and the man talking."

On July 10, 1962, Patriarca was heard pressuring a candidate to pull out of a political race in Providence's 5th Ward.

On Oct. 24, 1962, he was overheard discussing making political contributions to gubernatorial candidates apparently in Maine, the log states.

On Nov. 7, 1962, during a discussion of elections, he was overheard saying that "some of these guys shoot their mouths off, offer to call the governor right up for you. I never went near the guy. This would only harm the guy." It is not clear what governor he was referring to.

On June 15, 1964, an unnamed man told Patriarca that he had arranged to put up two campaign signs for an unnamed candidate. Patriarca, the log says, instructed the man to "tell the people where he is placing them that Raymond appreciates it very much."

On two occasions in 1963, Patriarca seemed to lament Notte's loss of the Rhode Island governorship, and he predicted Rhode Island would not have another Italian governor for at least 20 years.

The logs show Patriarca had access to officials and agencies that should not have been readily available to a crime boss.

For example, when Patriarca wanted to know who owned certain cars, he twice called someone at the Rhode Island Registry of Motor Vehicles and recited the registration numbers.

On June 15, 1962, Patriarca was overheard telling an unnamed man to "send his boy for summer work to [name deleted] on the second floor of the Registry Building" in Providence.

Twice in August 1962 and again in February 1963, people asked Patriarca to fix traffic tickets. Patriarca indicated he could do so.

On Oct. 17, 1962, Patriarca was overheard discussing the delivery of "lottery tickets" to Newport, R.I. by a Rhode Island state trooper. There was no legal lottery in Rhode Island at the time.

Talk of "fixing" criminal cases and obtaining "protection" from police officers was also common, the logs show.

For example, on June 4, 1962, Patriarca was overheard discussing a criminal case in which two jurors and the judge were on "his side." The log states Patriarca indicated the case had cost him $5,000, apparently a payoff.

On Nov. 9, 1962, Patriarca was overheard advising a man in trouble with the law to see an unnamed man in a district attorney's office and mention Patriarca's name. The man in the office, Patriarca said, "is a dear friend of mine."

On Jan. 22, 1963, Patriarca was overheard saying that his organization once had "100 percent protection in Boston" but that "things are tough" now because of a certain FBI agent.

On June 15, 1964, Patriarca indicated that an unnamed associate of his "knows all of the judges who can be reached" in Boston.

And on June 10, 1964, Patriarca was overheard saying that a "beef" against a criminal was "squashed by a judge for $1,000," the log shows.

The logs also contain several references to attempts to "fix" grand jury proceedings and persuade witnesses not to talk.

On Jan. 16, 1963, Patriarca said that if a potential witness in a criminal case "doesn't change his story, he is dead and if his family doesn't help him change his mind, they are dead, too," the log shows.

Patriarca's influence, the logs show, also extended to unexpected areas. For example, on Nov. 29, 1962, a man asked permission to use the crime chief's name in order to get a loan from a savings and loan institution. Permission was granted.

And on two occasions in June 1963, Patriarca was asked to use his influence to get certain records played on Boston and Providence radio stations. On one of those occasions, Patriarca indicated he could be of assistance.

During the second half of 1962, the logs show, Patriarca had extensive conversations with members of a Rhode Island laborers union about union elections. There was talk about getting "their" ticket into office.

In 1981, Patriarca was indicted for labor racketeering in connection with the laborers union, but he died before the federal case could be brought to trial.

On Feb. 8, 1962, Patriarca was overheard discussing "getting word from Hoffa in New York about (deleted),"

the log shows. This is one of three tantalizing but inconclusive references in the logs to Jimmy Hoffa, the former International Teamsters Union president who now is believed to have been slain.

On several occasions, Patriarca was overheard discussing "The Commission." Federal law enforcement authorities believe this to be the national governing body for organized crimes, responsible for mediating disputes between crime families and dividing up territory for criminal activities.

Most organized crime leaders have long denied the existence of "The Commission." The so-called "Five Families" trial set to begin in federal court in New York City early next year is in part an attempt by federal authorities to prove "The Commission's" existence.

The FBI's Patriarca surveillance log for Oct. 1, 1964, states the following: Patriarca "tells (name deleted) he was in New York yesterday at a Commission meeting and that (name deleted) has been disowned as well as his Family, which Raymond (meaning Patriarca) feels consists of from 200-400 members. Raymond instructs (name deleted) not to have any business with any of the (name deleted) Family and to treat them as outsiders. Raymond states (name deleted) was on the Commission and would have to give up sharing a million dollars a year from drugs and Las Vegas gambling."

Linking log entries with events known to have occurred in 1964, it is possible to deduce that Patriarca was discussing the plight of Joseph Bonanno. That former New York City crime boss has acknowledged that he was

expelled from "The Commission" during a power struggle with other New York crime families that year.

As expected, the logs are replete with discussions of illegal gambling and loansharking in many Rhode Island, Massachusetts and Maine cities. There is also a reference, on March 27, 1962, to establishing control of gambling operations in the Carribean nation of Haiti. No details of this are given.

Occasionally, the logs show discussions about large quantities of stolen goods, ranging from jewelry to refrigerators. On March 12, 1962, a man talked with Patriarca about cashmere coats and 2,500 pairs of slacks. Patriarca, the log notes, apparently bought them all.

Talk of money was almost constant, with a stream of persons entering the office to pay Patriarca money owed to him, to seek loans, or to ask him to invest in various enterprises. The logs show that the amounts discussed were often in the thousands and sometimes in the hundreds of thousands of dollars.

Despite dealing in such large sums, the logs show, Patriarca remained insistent on payment of much smaller debts, often under $100.

Often there was talk of violence. A favorite phrase of Patriarca's, the log shows, was "Put him in the hospital." On Aug. 8, 1962, for example, Patriarca heard a complaint that a gambler was "welching" on a debt. Patriarca, the log also shows, said that "the only thing to do is to give him a beating and make him pay."

In addition to his illegal activities, the log shows, Patriarca invested in a variety of legal businesses. There was discussion of hotels in Miami, for example. And on

March 14, 1963, Patriarca was overheard saying he "put plenty of money in the hotel supply business."

Few of his investments seemed to be successful, and Patriarca sometimes complained bitterly.

The logs disclose that he owned a Rhode Island company called D&H Trucking, which by June 1964 was on the verge of bankruptcy.

On Jan. 15, 1962, Patriarca was overheard saying he owned 75 percent of Indian Meadows Country Club near Worcester, Mass. Over the course of the year, he was overheard complaining about the investment and saying that the place was "not run right."

On Sept. 18, 1962, Patriarca was overheard saying he and "his people" had a $1.5 million investment in Berkshire Downs, a race track that was located in the western part of Massachusetts. Over the next two years, he was overheard complaining about mismanagement at the track. And he made frequent trips to New York City to seek a buyer to take it off of his hands, the logs show. The track has since closed. Patriarca's interest in it was previously publicly disclosed through federal investigations.

On several occasions, Patriarca was overheard saying that he had a $70,000 investment in Lincoln Downs, a horse track in Lincoln, R.I. His interest in that track, which has since closed and reopened as a dog track under new ownership, had been rumored but has not previously been publicly confirmed.

Patriarca was heard saying of Lincoln Downs: "What good is it if you can't make any money on it? You can't even get a return of 3 percent on your investment," the log shows.

The logs also show that Patriarca spent many hours listening to people's troubles, dispensing advice and distributing favors.

A woman asked him to help in arranging a marriage for a young couple whose parents were withholding their permission. A man asked the crime chief to intercede in a domestic squabble. A cafe owner wanted Patriarca's advice on a new location for his business, and Patriarca suggested one. A man asked Patriarca to help get his daughter into Bayview Academy, a private girls school in East Providence, R.I. Patriarca said he could speak to someone.

The crime boss was also overheard dispensing occasional words of wisdom to his teenage son, Raymond. When you get married, Patriarca told his son, "marry an Italian girl and she will stand by you when you are in trouble and won't call the police if you rap her in the mouth."

Patriarca, the logs show, saw himself as a man unfairly persecuted and beset by troubles.

He frequently worried about being cheated, as in June 1962, when he suspected that he was being "taken" on some horse racing bets.

He feared that a young man who befriended his son at the University of Rhode Island was a "plant" from the FBI.

On his frequent trips to New York City, often to meet with organized crime chiefs, he took elaborate precautions to avoid being followed.

On Nov. 7, 1964, he was overheard explaining that he would arrive in the city an hour before his appointment

and take a cab up 8th Avenue to a hotel. He would hang around the lobby for a while, take an elevator to the tenth floor, walk down a flight, and take an elevator back to the lobby. Then he would slip out a side door. If his appointment was, say, on 55th Street, he would take a cab to 59th and then double back.

Patriarca boasted of what a great job he usually did ducking the authorities. The FBI agent listening in penned a one-word comment in his log: "Ha!"

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

IN THE MATTER OF	)	
APPLICATION TO ADJUDGE	)	
THE PROVIDENCE JOURNAL	)	
COMPANY AND ITS	)	NO. 86-003
EXECUTIVE EDITOR,	)	
CHARLES HAUSER, IN	)	
CRIMINAL CONTEMPT	)	

FEBRUARY 10, 1986
9:30 A.M.

FEDERAL BUILDING
PROVIDENCE, RHODE ISLAND

BEFORE THE HONORABLE FRANCIS J. BOYLE

APPEARANCES:

FOR THE PLAINITFF [sic]: WILLIAM A. CURRAN, ESQ.
-and-
ROBERT D. PARRILLO, ESQ.

FOR THE DEFENDANT: EDWARDS & ANGELL
BY: JOSEPH V.
CAVANAGH, JR. ESQ.
-and-
EDWARD F. HINDLE,
ESQ.
-and-
KNIGHT EDWARDS, ESQ.

(p. 2)

I N D E X

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(p. 3) (COMMENCED AT 9:31 A.M.)

The Clerk: The matter before the Court is, in the matter of application to adjudge the Providence Journal Company and its executive editor Charles Hauser in criminal contempt, Miscellaneous 86-003.

Mr. Curran: Ready for the applicant.

Mr. Cavanagh: Ready for the defendant, sir.

The Court: Do you have a stipulation of fact?

Mr. Curran: Yes, your Honor I believe the original of stipulation of facts has been filed with the Court.

The Court: When was it filed?

Mr. Cavanagh: Yes, it has.

The Court: When?

Mr. Cavanagh: On Friday afternoon.

Mr. Cavanagh: We have a copy of that.

The Court: Are all of the exhibits here?

Mr. Cavanagh: Yes.

Mr. Curran: Yes, your Honor.

The Court: How about 7 and 8?

Mr. Curran: Seven and eight are there.

The Court: Letters of—

(p. 4) Mr. Curran: Letters of communication between the Journal and the Federal Government; and also 8 are materials pertaining to t.v. scripts and the "Hartford Current."

The Court: Now, I don't see the tape here.

Mr. Cavanagh: The transcript of the tape I believe is attached.

The Court: All right.

Mr. Cavanagh: Do you see it?

The Court: I'm beginning to find it now. All right. All right, I see. All right. You may proceed.

Mr. Curran: If it please the Court, I'm William A. Curran, Special Prosecutor appointed by this court on December 16, 1985 to seek contempt against the "Provi-

dence Journal" and its editor, Charles M. Hauser. Pursuant to that appointment, I have applied and obtained from the Court a Show Cause Order against the defendants seeking to find them in criminal contempt for the publishing in violation of this Court's order of November 13, 1985, the materials pertaining to airtels that relate to conversations between Mr. Patriarca and others pertaining to the plaintiff in the original (p. 5) action Raymond J. Patriarca versus the "Providence Journal," WJAR TV and the Federal Bureau of Investigation and other parties of the United States Government. As I say, the order is issued; and we're here today, your Honor, for the Journal and Mr. Hauser to establish that he should be found in contempt.

The Court: Mr. Cavanagh?

Mr. Curran: By the way, does the Court request that we read into the record the stipulation of facts; or is it sufficient—

The Court: Life is simply too short for that Mr. Curran. This is a half inch stack of papers.

Mr. Cavanagh: Your Honor, my name is Joseph D. Cavanagh, Jr. I represent the defendants in this action. At this time I call Chuck Hauser to the witness stand.

CHARLES McC. HAUSER (Sworn)

DIRECT EXAMINATION BY MR. CAVANAGH

The Clerk: State your full name and spell your last name for the record, please.

The Witness: My name is Charles Newland McC. Hauser, H-a-u-s-e-r.

(p. 6) Q. Mr. Hauser, where do you reside?

A. I reside in Barrington, Rhode Island.

Q. What is your occupation?

A. I'm a newspaper editor.

Q. How long have you been employed as a newspaper editor?

A. I've been employed in my current job for approximately 12 years but more years than that in various editing jobs.

Q. You are presently employed by the Providence Journal Company?

A. By the Providence Journal Company.

Q. What is the exact title that you hold with the company?

A. I'm the vice-president and executive editor of the "Journal Bulletin."

Q. And you've held that title for how long?

A. Twelve years.

Q. Could you briefly describe for the Court your educational background?

A. I received a bachelor of arts in journalism from the University of North Carolina; and I've been through the program for management development at the Harvard Business School, which is sort of a half year, mini MBA program.

(p. 7) Q. And when did you graduate from college?

A. In 1954.

Q. Could you give us a brief outline of your employment history before you came to work for the Providence Journal Company?

A. I worked in North Carolina after graduation for a semi-weekly newspaper, the "Chapel Hill Weekly." I worked for the "Charlotte Observer" and the "Greensboro Daily News," both daily newspapers in North Carolina. I also worked in the Washington bureau of the "Charlotte Observer." I went overseas and worked in Paris and London with United Press International, returned for a time with the "Charlotte Observer" then returned to the "Charlotte Observer" then went to Greensboro, North Carolina then to Norfolk, Virginia with "The Virginian Pilot and Ledger Star" there and then 12 years came to Providence.

Q. Those jobs you just listed involve in part editing and reporting?

A. All of those jobs involved editing and reporting responsibilities except for Norfolk when I was the vice-president and general manager with overall responsibility for the newspaper.

Q. Mr. Hauser, what are your duties and (p. 8) responsibilities as executive editor of the newspaper presently?

A. I'm in charge of all the nonadvertising content of the newspaper; and I supervise a staff of approximately 300 people of the news department of the Journal, which is engaged in producing that material. For the past year I've temporarily been assigned additional duties that are the equivalent of being general manager of the newspaper.

Q. Aside from your formal education, have you participated in any continuing education courses in the journalism field?

A. I've taken a number of seminars including the Pointer Institute for Media Studies in St. Petersburg, Florida; the American Press Institute in Restin, Virginia and the Communication Law Seminar of the Practicing Law Institute in New York City.

Q. Have any of these educational programs dealt with issues involving the First Amendment and Prior Restraint?

A. Many of them have dealt with the First Amendment and Prior Restraint issues. The practicing law Institute Seminar, of course, had a good bit more on that.

(p. 9) Q. Have you made it a practice to be familiar with the history of the First Amendment and Prior Restraints in this country?

A. I would say I've studied those matters since journalism school and for many years throughout my career.

Q. Mr. Hauser, are you familiar with the news article which was published in the "Providence Journal" newspaper on November 14, 1985, entitled, "Patriarca Senior to Son, "You only lie to cops and people you don't know"?

A. Yes, I'm familiar with that article.

Q. Did you participate in any way in gathering the information which was published in that article?

A. Not directly; but under my supervision steps were taken to obtain the materials that were incorporated in that article; and, of course, it was written under my general supervision.

Q. Could you describe briefly the process and the time frame in which the Providence Journal sought to obtain that information?

A. In the fall of 1984, after the death of Raymond L. S. Patriarca, we applied to the—through the Federal Information Freedom of Information Act to the FBI for the summaries of (p. 10) the bugging of Mr. Patriarca's office; and in a relatively short period of time during the following year we received a great deal of that material.

Q. The various letters which are attached as Exhibit 7-A through 7-G in the statement of facts, are those the correspondence between the government and the Providence Journal concerning that information?

A. Yes, that's correct.

Q. Why did you as an editor in the Providence Journal in general want to obtain this information?

A. We felt the information was a definite public interest and that it was in the best interest of the public to print it because it involved activities of organized crime.

Q. Did you consider at all that it also involved the conduct of the government?

A. I don't understand the question.

Mr. Curran: I object. It's leading.

The Court: Well, if the witness doesn't understand the question, it's not a problem. Next question, please.

Q. Were you aware of the lawsuit filed by Raymond Patriarca, Jr. in the United States District Court (p. 11) against the Providence Journal and others?

A. Yes, I'm familiar with that case.

Q. When did you first become aware of that lawsuit?

A. Sometime in November of last year.

Q. Was it prior to the publication of November 14 which you previously testified to?

A. Yes, prior to that publication.

Q. On November 13, 1985 did you become aware that Mr. Patriarca was able to obtain a temporary restraining order from the Federal District Court?

A. Yes, I did.

Q. When did you first become aware of that fact?

A. It was late—late in the day of the 13th, around suppertime that evening.

Q. Were you informed of the nature of the order entered by the Court?

A. Yes, I was.

Q. And after learning of it when you were at home, what did you do?

A. I learned of that through a phone call to my home, yes.

Q. That's right. And what did you do then?

A. I went to the office, went to the Journal.

Q. And who made the decision to publish the article which we referred to previously?

(p. 12) A. I made that decision.

Q. Did others participate in the decision?

A. Yes, there were three others directly involved in the conversations and the discussion. One was James V. Wyman, the deputy executive editor, a long time newspaperman whose judgment and advice I trust and respect. He concurred in the decision. And my publisher and chairman of the Journal, Michael Metcalf, approved the decision without which we could not have published it.

Q. Incidentally, I referred to the article in the morning paper on November 14. There was also an article published in "The Evening Bulletin" on November 14 entitled, "Fatherly advice from Patriarca, Sr." Did you also decide to publish that article?

A. Yes, it's an identical article with slightly different headline.

Q. Did you and Mr. Wyman and Mr. Metcalf discuss the question of whether or not to publish before you made the decision?

A. Yes, we discussed it at great length during that evening.

Q. Could you share with the Court some of the issues (p. 13) which were discussed that evening prior to making the decision?

A. We were extremely concerned with the fact that our decision involved disobeying an order of the Federal Court. We realized that that would be a very serious action to take and were very concerned about that. At the same time we were very concerned with the implications of the First Amendment to the Constitution and

the fact that we considered the judge's order a Prior Restraint.

Q. With respect to the article that was published on Thursday morning, November 14, which you've previously testified about, what was the last available time for the newspaper to put that article to press?

A. Because our press actually starts running about 1 o'clock in the morning, the latest we really can prepare materials to go in that edition is about 10:30 at night.

Q. So that on November 13, Wednesday evening, the deadline was 10:30 that night for publication the next morning?

A. Effectively the deadline was about 10:30, yes.

Q. Did you consider that the Court Order to the (p. 14) Providence Journal was a Prior Restraint in your view?

A. There was no question in our minds that it was a Prior Restraint.

Q. Why?

A. We felt that it was such a clear case of material which we had in our possession, we had it in our possession lawfully, which we felt was important to us and that having that in our possession, that the First Amendment protected us in our decision to publish it.

Q. Had you ever been—

Mr. Curran: Excuse me, your Honor. May I have that answer read back?

(PREVIOUS ANSWER READ BACK TO MR. CURRAN BY COURT REPORTER)

Q. At the time you made the decision to publish, did you consider that the Court Order was a Prior Restraint?

A. We did consider that, that the Court Order was a Prior Restraint in violation of the First Amendment.

Q. Did you consider at all what precedent might be set if you refrained from publishing it?

(p. 15) Mr. Curran: Objection, your Honor.

The Court: Precedent for whom, Mr. Cavanagh?

Mr. Cavanagh: For the Providence Journal.

The Court: Precedent for the Providence Journal. Sustain the objection.

Q. That evening, when you decided to publish, what other factors did you consider other than the fact that you thought it was a Prior Restraint?

A. We considered that failing to publish in the next edition of "The Journal" would be a clear signal to people that frequently liked to block publication of something, whether politicians or office holders caught doing improper things, members of organized crime; that if those people felt they could use the courts to block publication, that that would be a serious message to send to them.

Q. Why were you concerned that that would be the wrong message from your point of view?

A. Frequently we have—well, at all times we have a number of stories under investigation and being worked on that are extremely sensitive; and sometimes they're very time sensitive, delay of (p. 16) publication for even a day or two can be extremely critical at times.

Q. Did you consider what alternatives you might have to publishing?

A. The only alternatives open to us, as we understood it, one, of course, the question of appealing from the ruling came up; but our understanding was that there was no practical way to appeal that night from a temporary restraining order; and we felt that we did have to publish that night. We did consider the alternative of waiting one day, giving ourselves one more day to consider all the facts, to weigh our decision and publish one day later, but we felt the damage done to the First Amendment by waiting even one day was too crucial.

Mr. Cavanagh: Just one minute, your Honor, please.

The Court: Certainly.

(Pause)

Q. One final question, Mr. Hauser. At the time you decided to publish, did you believe that the First Amendment of the Constitution gave you the right to do so?

(p. 17) Mr. Curran: Objection. No, I withdraw the objection, your Honor.

The Court: All right, you may answer.

A. Yes, we believed that the—because the First Amendment prohibits prior restraints on publications that it did give us that right.

Mr. Cavanagh: Thank you, I have no more questions.

CROSS-EXAMINATION BY MR. CURRAN

Q. Mr. Hauser, I gather from your direct testimony that you've had a great deal of experience in studying the First Amendment and this question of prior restraints?

A. Yes, I would say so, yes.

Q. So you do have some familarity with the law as such?

A. I'm not a lawyer; but I do have some familiarity with the law.

Q. Do you believe that no one, no matter how righteous his private motives, can't be a judge in his own case?

Mr. Cavanagh: Objection.

The Court: What's the basis of the objection?

(p. 18) Mr. Cavanagh: It's irrelevant with respect to this matter. His opinion in a hypothetical, which isn't confined to this case.

The Court: It seems to me that you have opened the door in asking the questions that you asked that we are going to have a witness who tells me he's not a lawyer to tell me what the law is. Since he's told me part of it, we'll hear the rest of it, all right. You may answer the question. Do you wish it read back?

(PREVIOUS QUESTION READ BACK BY COURT REPORTER)

A. That I believe that no one can be a judge in his own case? I don't understand the question.

The Court: Irrespective of the motive. Do you understand the question?

The Witness: I don't understand the question.

Q. You don't understand that question? Let me read to you from an opinion that I assume you or counsel for the Providence Journal did consider in this problem; and

it's quoted from the case of the United States versus United Mine Workers in 1947 case 330 U.S. 258 at page 308, 310. This is language of Mr. Justice Frankfurter. "No one, no (p. 19) matter how righteous his private motive, can be judge in his own case. That is what courts are for." Do you understand that?

A. I understand that language, yes.

Mr. Cavanagh: Objection.

The Court: What's the basis.

Mr. Cavanagh: Argumentative.

The Court: The witness has told us he didn't understand it in the first place, now he does. What's argumentative about that?

Mr. Cavanagh: My objections on the record.

The Court: All right, overruled.

Q. Do you agree with it?

A. In general I would say I agree with it, yes.

Q. I assume you would also agree with the language, "Rhode Islanders who believe in the rule of law and that thought be—must appreciate Superior Court Judge Corrine P. Grande's strong enforcement of that standard in the Pawtucket school teachers strike?

Mr. Cavanagh: Objection.

The Court: Basis.

Mr. Cavanagh: Same grounds. Also relevance.

(p. 20) The Court: Well, it seems to me that you put this witness on the witness stand to testify that this was a Prior Restraint, a clear case of material in his posses-

sion lawfully of which the First Amendment protects the right to publish it. You opened the door of this kind of thing. I'm not going to spend a lot of time listening to it; but I'm going to allow this.

(PREVIOUS QUESTION READ BACK BY COURT REPORTER)

A. My feeling is that if someone disagrees with the law, they must be ready to take the consequences of any actions to carry out that disagreement.

Q. That was a quote from the "Providence Journal" of September 19, 1985; isn't that so?

A. I believe that was correct. That was an editorial in "The Journal."

Q. And it was the Journal's policy as well as yours as the general manager, so to speak, equivalent to general manager, that all Rhode Islanders should follow the rule of law?

A. Certainly in that particular case, that was our policy. I don't think that editorial was presuming to anticipate the facts in other cases.

(p. 21) Q. No. That editorial was dealing with the rights of people who were on strike; is that true?

A. I think that editorial was dealing with—the editorial was dealing with teachers who violated the law and then violated a Court Order upholding the law.

Q. Just so—I don't want to trap you. Just read it. It's the bottom part of that.

A. All right.

Mr. Curran: Do you have any objection to having this marked as an exhibit?

Mr. Cavanagh: Yeah, I object on the grounds of relevance.

The Court: Do you have other editorials you want me to read, too, Mr. Curran?

Mr. Curran: No, your Honor. I wouldn't burden the Court with another one.

The Court: Mark this for identification. I'm not going to include it as full.

(WHEREUPON, THE EXHIBIT WAS RECEIVED IN EVIDENCE)

Q. Mr. Hauser, before we leave that topic of the strike, that and the actions of the strikers that gave rise to the editorial I read from, it's a fact that the strikers or school teachers were (p. 22) asserting their rights one way or the other?

Mr. Cavanagh: Objection. Same grounds.

The Court: Overruled, you may answer the question.

A. I'd say they were taking actions. I don't know whether they're asserting rights or not.

Q. They were taking actions?

A. In support of their beliefs.

Q. In support of their beliefs. And as individuals—acting as individual citizens; correct?

A. Yes, I would say; and I don't know that they were asserting any particular rights, but—

Q. You don't know if you could recognize their rights, but you know they were taking a position that they thought was right?

A. That's correct.

Q. Correct?

A. Uh-huh.

Q. In the litigation that gives rise to this application for a showing of contempt, that was litigation brought on behalf of a private citizen; was it not?

The Witness: In this case?

Mr. Curran: In the initial case, correct, the one that was filed on November 8, (p. 23) that you were aware of, 1985, that you were aware of?

A. That's my understanding, yes.

Q. And in that litigation, Raymond J. Patriarca, was asserting his right to privacy; was he not?

Mr. Cavanagh: Objection.

The Court: Basis.

Mr. Cavanagh: Relevancy. Calls for a conclusion of law.

The Court: You know, you can't have it both ways Mr. Cavanagh. You put all this in to begin with. You opened the door. Overruled.

Mr. Cavanagh: With all due respect, he gave his opinion as to why he did what he did.

The Court: And his opinion may be tested; and it is being tested. That's why I'm allowing this line of questioning. Your objection is overruled.

(PREVIOUS QUESTION READ BACK BY COURT REPORTER)

A. My understanding, yes, of that case is he was asserting his right to privacy.

Q. And in asserting that right, he sought to enjoin the "Providence Journal," and when I say "Journal," I also mean the bulletin, "Journal (p. 24) Bulletin," to enjoin them from publishing materials which might impinge or effect his privacy; isn't that so?

A. I think that was what he stated, yes.

Q. And in furtherance thereof there was this motion that I'm sure you became aware of somewhere along the line that he was seeking a temporary restraining order from the publication of materials based on airtels and matters that you had received from the Freedom of Information Act request?

A. Yes, I'm aware of that.

Q. And you've testified that you were aware counsel for "The Journal" and counsel for Raymond Patriarca, had met with the Court, and the Court had issued on November 13, 1985, a temporary restraining order; isn't that so?

A. Yes, I became aware of that that night.

Q. Now, do you know when your counsel met with the Chief Judge of the Federal Court?

A. I don't know the precise time. I assume assume it was sometime that afternoon.

Q. In any event, you didn't hear about it until suppertime; is that correct?

A. Yes, that's correct.

(p. 25) Q. Do you know whether anyone else at the "Providence Journal" office heard about it prior to your becoming aware of it?

A. Mr. Wyman was aware of it, yes, and our reporter. I'm sure our reporters and editors involved in the news story were aware of it.

Q. And Mr. Wyman is sitting here in the courtroom?

A. That's correct.

Q. When do you think—when do you—strike that. When did the "Providence Journal" start working on the story based on the airtels, if you know?

A. The reporter assigned to that story or series of stories based on those airtels started working as soon as we got the first airtels, I think in July of 1985. Now, when he started working on the material in this specific story, I'm not sure, but there were a number of stories he was pulling together from those airtels.

Q. And he—strike that. When you say "he," who are you referring to?

A. Robert Cramer [sic] was the reporter assigned to that.

Q. And Robert Cramer [sic] was the one who made the application to the Federal Government for the materials?

(p. 26) A. I believe his signature is on all those applications, yes.

Q. They form, a part of Exhibit H, your Honor, of the stipulation of facts—

The Court: Exhibit 7?

Mr. Curran: Seven. I'm sorry.

Q. And in respect to that, Mr. Cramer [sic] had materials ready for publication prior to November 13, 1984, did he not?

A. He was working on a number of stories that were in various stages of completion based on those airtels.

Q. And the Journal had these airtels as early as the early part of the summer, it's [sic] that your testimony, 1985?

A. I believe we received the first ones in July of 1985 or approximately that time.

Q. And just to make sure what we're talking about, these are airtels that relate to Raymond J. Patriarca; is that so?

A. These were airtels of conversations recorded in the offices of Raymond L.S. Patriarca. They concerned Raymond J. Patriarca only incidentally. They concerned a great many things. He was just one of the subjects of those airtels.

(p. 27) Mr. Curran: I move that answer be stricken as nonresponsive.

The Court: Well, Exhibit—Exhibit 7-A is a letter from the Providence Journal Bulletin to Federal Bureau of Investigation and it seeks copies or access to transcripts and summaries of conversations recorded at the Atwells Avenue office of Raymond L.S. Patriarca in Providence, Rhode Island during the period March 6, 1962 to July 12, 1965. The motion is denied.

Q. Do you know whether counsel for the Journal had possession of the airtels and other material that the Journal had procured from the Federal Government when

it went to the meeting with the Court on November 13, 1985?

A. I don't know.

Q. You don't know that? Do you know whether the Providence Journal gave access to the attorney for Raymond J. Patriarca or to Raymond J. Patriarca access to those airtels and other materials procured from the Federal Government?

A. I'm quite sure we didn't give them access to any materials in our possession.

Q. So just to set the stage, so to speak, for the meeting of November 13, 1985, in the chambers of (p. 28) Federal Court, the Journal had materials that they had obtained from the Federal Government and, of course, the Federal Government had the materials that they had furnished to the Journal. Is that a fair statement?

A. That's correct.

Q. And as far as you know, the Journal didn't give copies to Mr. Patriarca and wouldn't, in any event?

A. We would not share those copies with anybody.

Q. Besides Mr. Cramer [sic], who else in the employ of the Providence Journal was aware of the contents of the materials that have been obtained from the Federal Government pertaining to Raymond J. Patriarca as of November 13, 1985?

Mr. Cavanagh: Objection.

The Court: Basis?

Mr. Cavanagh: Relevance.

The Court: Where are we going with this line of questioning?

Mr. Curran: I just want to establish, your Honor, that they had this material, they were working on this material, Mr. Cramer [sic] and others, and that there was editorial advice pertaining to the publication thereof, whether it was to occur (p. 29) on November 14 or any other time.

The Court: Well, the latter part of your observation you're not asking at this point.

Mr. Curran: No, I'm not.

The Court: And the former part I don't know whether I'm interested in whether one person or 11 people were working that night. I'm going to sustain the objection. Or indeed if everybody was working that night.

Q. Who was it that represented the Journal at the meeting of November 13, 1985 with the judge?

A. I'm not sure which specific member of the Edwards & Angell firm represented us that day.

Q. But it would be members of the Edwards & Angell firm?

A. Of that firm, yes.

Q. Do you know whether Mr. Wyman was aware of the fact that they were to confer with the Court about this request for a temporary restraining order on November 13?

A. I didn't catch the question.

(PREVIOUS QUESTION READ BACK BY COURT REPORTER)

A. I don't know whether he was aware of that in advance, no.

(p. 30) Q. Do you know who in the employ of the Providence Journal was aware that they were going to confer with the Court on November 13, 1985?

A. I would say Mr. Wyman would be the most likely person to have that knowledge. I just don't personally know whether he knew about it in advance.

Q. Anyone else?

A. Not anyone else in particular. Mr. Wyman is our liaison with our legal counsel.

Q. Now, you've indicated that Mr. Metcalf was the publisher?

A. That's correct.

Q. When did he first become aware of the meeting with the Court on—of November 13, 1985?

A. I don't know.

Q. Aside from Mr. Metcalf, would anyone else at the Journal know?

A. Mr. Metcalf would be the key person that would be informed when a legal question like that is being discussed. Other people might know incidentally.

Q. Would it be customary for the publisher to be brought in even before materials such as this are published without any restraining order?

(p. 31) The Court: What's the objection?

Mr. Cavanagh: Objection.

The Court: Basis?

Mr. Cavanagh: Relevance.

The Court: I'm going to allow it.

Mr. Cavanagh: Also the form of the question, "customary," and no foundation.

The Court: I'm going to sustain the objection as to the form of the question. I suppose what he wants you to ask is, is it the practice of.

Q. Is it the practice of the Providence Journal Bulletin to have the publisher aware that the staff is working on materials of the nature we're concerned with here today?

A. It would be the practice for us to make him aware of the most sensitive and serious stories, which would not be terribly often.

(PREVIOUS ANSWER READ BACK TO MR. CURRAN BY COURT REPORTER)

Q. Would that include making him aware of the fact that a lawsuit had been filed on November 8, 1985, seeking to protect the rights of privacy of Raymond J. Patriarca?

(p. 32) A. Because of the nature of this situation and our long fight to get those airtels, yes, that would be something that he would be made aware of.

Q. So there really isn't any question in your mind that Mr. Metcalf as publisher was aware prior to November 13, 1985 that you did have these materials that pertained to the rights of Raymond J. Patriarca?

Mr. Cavanagh: Objection.

The Court: Sustained.

Q. Now, I believe your testimony was that on about suppertime you became aware that the Court had issued

a temporary restraining order against the "Providence Journal." I suppose the next question logically would be, when do you have supper?

A. I'd say that was about 6 o'clock in the evening, 5:30, 6 o'clock, something like th[illegible]

Q. Who was it that contacted you?

A. Pardon.

Q. Who was it that contacted you?

A. I believe the first call I had received was from Mr. Metcalf.

Q. The publisher?

A. Yes.

Q. What did he say?

(p. 33) A. He asked me whether I was aware of what had been going on that afternoon; and I told him, no, that I had just gotten home but that I would consult with Mr. Wyman and we'd get back to him shortly.

Q. Did he indicate to you that he was aware of what had been going on that afternoon?

A. Yes, certainly; because he was asking me what I knew about it.

Q. Anything else told to you by Mr. Metcalf at that time?

A. No, I think our conversation was fairly short?

Q. As a consequence of which you went to the office?

A. I talked to Mr. Wyman by telephone and then went to the office after that.

Q. And Mr. Wyman is your assistant; is he?

A. He's my chief deputy, yes.

Q. Chief deputy. And was this a telephone conversation with Mr. Wyman?

A. I telephoned Mr. Wyman from home before I went to the offers [sic].

Q. Was he at home?

A. He was at the office.

Q. At the office?

(p. 34) A. At the Journal.

Q. And what did you say to Mr. Wyman?

A. I told him Mr. Metcalf had called me, asked about a restraining order placed on us and asked him for information about that; and he informed me that they indeed were under a restraining order and that we needed to discuss the situation and how we should act on that order that evening; and I told him I would go down to the office as quickly as possible.

Q. Now, at that point in time, did you discuss whether the story was ready to go, so to speak, go to press?

A. I don't recall discussing that at that time, no.

Q. When did you first discuss when you would go to press?

A. I think very, very quickly after I got to the office I asked if the materials were ready for publication and was told, yes, they were or they could be very quickly.

Q. Now, just so the Court is aware, I suppose aware of my ignorance, you don't set print any more, do you, as

they use to? I mean, it's not a question of getting the letters together and putting them (p. 35) in a box?

The Court: Benjamin Franklin did it that way.

Q. They don't do that any more; do they?

A. It's a much faster procedure where the reporter types his story into a computer terminal, and the computer sets the type.

Q. When was the story put in the computer, not when it activated the press; when was it put into the computer that was the basis of the article of November 14, 1985?

A. Because reporters—reporters write their stories into the computer all the time, I'm assuming the story in some form was already in the computer.

Q. And it's for that reason that you have the ability to meet this 10:30 deadline and get the materials on the truck and out for distribution early in the morning, 1 o'clock?

A. The computer certainly speeds up that process.

Q. And there isn't any question in your mind that this material or some of the material was already ready to go even before you heard of the TRO?

A. My belief is that that material was in—was (p.36) very close to publishable form if not in publishable form.

Q. When did the Providence Journal, to your knowledge, first know that WPRO or Channel 10—12 had access to the same materials and was ready to publish?

A. I'm not sure when we became aware of Channel 12s use of the material. Perhaps that day, perhaps the previous day, but around that same time.

The Court: The question was, when did you become aware that they had the material, not when they published it.

A. I'm not sure what date I became of aware of Channel 12s possession.

The Court: Sometime before the 13th of November, 1985?

The Witness: Sometime before the 13th, but I'm not sure.

The Court: Would it be days or weeks or months?

The Witness: Perhaps days, close—in that period.

Q. Not weeks?

A. Not that I recall, no.

(p. 37) Q. When were you aware that other segments of the media had access to the same material to form the basis of the publication of November 14, 1985?

A. I was aware sometime before that date, perhaps weeks, again, I don't recall precisely, that the "Hartford Current [sic]" was in possession and had published some of this material.

Q. It was only a short time before November 13 that you became aware that the "Hartford Current [sic]" had published some materials based on airtels?

Mr. Cavanagh: Objection.

The Court: Sustain the objection.

Mr. Curran: If it please the Court, I call to the Court's attention that the "Hartford Current [sic]" published on September 22, 1985.

The Court: The problem is the witness says weeks, as I recall, and you said days. That's where you had the problem.

Q. You are aware that a part of the record in this case now is the "Hartford Current [sic]" publication in the Sunday paper?

A. I'm aware that there's at least one story by the "Hartford Current [sic]" from these airtels in the—that sheet of facts, but I believe just one; and I imagine they published more than one story, (p. 38) although I haven't read others.

Q. And when did you learn of that story that I'm referring to?

A. I'm not—I really don't remember; because I don't know the date of that story.

The Court: - Are you familiar with the story?

The Witness: I've look at that particular story; but I don't remember.

The Court: Does the story refer to Raymond J. Patriarca, do you know?

The Witness: The story I remember seeing refers to Raymond J. Patriarca, yes.

Q. Do you have any knowledge when anyone else, such as Mr. Wyman or others at the Journal were aware that the "Hartford Current [sic]" had published that article?

A. No, but our concern would not have been with the other newspapers; because we had chosen—rather than rush into print, we had chosen to have our reporter

carefully work through all these airtels, pull together the facts on various specific topics and do a very careful preparation of our news stories. We knew that other outfits like the "Hartford Current [sic]" were rushing into (p. 39) print; and we chose not to operate that way.

Q. Do you have any knowledge when the Court learned for the first time of the contents in those materials furnished by the Federal Government to the Providence Journal?

Mr. Cavanagh: Objection.

The Court: Well, I think the record is perfectly clear here, that after some struggle in which I was told it was going to take a couple of months to get the material to me, that I received it. I think that is a matter of record, filing by the Department of Justice.

Mr. Curran: I won't belabor the point, Judge. It's Exhibit 4 and Exhibit 5, the two transcripts both referring to it, I believe.

The Court: It was quite—sometime after the hearing on preliminary injunction, or was it at the hearing on preliminary injunction? Yes I can remember Mr. Sammartino with a box of papers propped up here, so that was the hearing on preliminary injunction. Initially I was told it was going to take months to gets [sic] it.

Mr. Curran: As long as the Court is aware it was November 19, 1985, that you first, or the Court became—had access to the materials.

(p. 40) Q. In your direct testimony, Mr. Hauser, you indicated that to your mind and based on your educational experience and your experience as an editor, that there was no question that this was a Prior Restraint?

A. Based on my education and study and work in the field, yes, my belief was very strongly that this was a Prior Restraint.

Q. And what does that mean to you, a Prior Restraint?

A. Prior restraint means censorship in advance of publication, blocking in advance of publication.

Q. And it likewise means that this censorship also includes orders of the Court relating to the rights of an individual?

A. The order was the censorship.

Q. The order was the censorship. Therefore, it was a Prior Restraint, therefore, you had the right to publish, is that what you're saying?

A. I'm saying my understanding of the First Amendment of the Supreme Courts rulings on the First Amendment are that I am protected from prior restraints.

Q. What rulings are we referring to when we say the Supreme Court rulings? I don't expect you to give (p. 41) the title and verse?

A. I can't cite them. I can't cite a case.

Q. You can't cite a case? And you indicated that it also was of significance to you that this was a clear case that involved materials that we had in our possession and therefore had the right to publish under the First Amendment; is that a fair statement of what you said on direct?

A. We had those materials, yes, we had a right to publish them.

Q. The fact that you had the materials gave you the right to publish, is that what you're saying?

A. No, sir, the First Amendment gave us the right to publish.

Q. And putting it in the context of the original case, you're saying the First Amendment gave you the right to publish materials that related to the rights of privacy of an individual and that were the subject of a protective order of the United States District Court for the district of Rhode Island referred to as a Temporary Restraining Order; is that a fair statement?

A. The First Amendment was certainly overriding any rights to privacy.

Q. And I believe you then indicated in your answers (p. 42) to Mr. Cavanagh's questions, failing to publish would be a clear signal to people such as politicians, members of organized crime, et cetera, that they could appeal to the Court for relief and therefore block publication. Is that what you are saying?

A. I think I said that they could use the Court to block publication of material where timely publication would be essential.

Q. And it's your opinion today, as it was on November 14, 1985, that Raymond J. Patriarca, through his attorney, Mr. Cicilline, was using the Court?

A. As a private citizen, of course, he has the right to use the courts; and he was using the courts.

Q. And notwithstanding the fact that he had the right as a private citizen to use the Court and had in-

deed to appeal to the Court by filing this litigation, you say the Court had no right to protect his rights at least until it had the opportunity to examine the law as it relates to his claim for relief?

Mr. Cavanagh: Object to the form of that question.

The Court: Well, overruled. You may (p. 43) answer the question.

A. I would say that the primary thing in my mind was the overriding importance of the First Amendment.

Q. Your rights were greater than his rights—or the Journal's rights were greater than his rights at that point in time; is that what you're saying?

A. Not my personal rights.

Q. Not your personal rights. We're talking, Mr. Hauser, you as editor and chief and the Journal; and you're saying that editor and chief's rights, Mr. Hauser, editor and chief's rights and those of the Journal were, notwithstanding the order of this court of November 13, greater than Mr. Patriarca's; and, therefore, you could publish?

A. I would say in my opinion that the right to privacy is something very vague and ill-defined, whereas the right to publish under the First Amendment is very clear cut.

Q. Whether the right of privacy is vague or ill-defined, whose function is it to define the right of privacy but the Court's. Is that a fair statement?

The Witness: Would you repeat the statement?

(p. 44) Mr. Cavanagh: Objection. It's a statement, your Honor. I object.

The Court: I'm sorry?

Mr. Cavanagh: It's a statement; it's not a question.

Mr. Curran: It's a statement; and I'm asking him if he agrees with it.

The Court: Why don't you repeat it and put a question mark at the end of it; and we'll get around it that way.

Q. You have indicated that you thought the right of privacy is ill-defined, nebulous, right; is that what you mean?

A. That's my understanding, yes.

Q. And isn't it a fact it would be up to the courts to define the scope of the right of privacy?

A. I understand the courts are in the process of trying to define them.

Q. And this is one of the issues that this Court was confronted with at the time it issued the temporary restraining order on November 13, 1985; isn't that so?

A. That is my understanding, yes.

Q. And you recognize that Mr. Patriarca had the right to ask this Court to define the scope of his right (p. 45) of privacy as it related to materials involved with the government and the disclosure thereof?

A. That's true.

Q. Now, in reaching this opinion, you had discussions, did you not, with counsel, Edwards & Angell; we won't get into the specific particular people but—

A. I did not talk with the lawyers that evening.

Q. You did not?

A. No.

Q. Who did talk with the lawyers on the staff of the Providence Journal prior to the publication?

A. Mr. Wyman consulted with the lawyers.

Q. Did Mr. Wyman relate to you what the lawyers advised him pertaining to obeying the temporary restraining order?

A. Yes, he did.

Q. And what did he say?

Mr. Cavanagh: Objection.

The Court: What do you say to that, Mr. Curran? I suppose the argument is privilege.

Mr. Cavanagh: Yes.

Mr. Curran: Well, is it at that point in time?

The Court: I must say initially I think (p. 46) it is. You tell me why it's not, and I may let you ask the question.

Mr. Curran: I didn't understand the Court's ruling.

The Court: I say my reaction is that it is privileged. This is advice given to a client. But if there's some exception to that, I'll hear you on it. Respect to clients right of privacy in circumstances.

Mr. Curran: I recognize that.

The Court: All right. Sustain the objection.

Q. Now, there was a topic discussed about appeal. You understood there was no right of appeal from this. My questions are directed to the order, Temporary Restraining Order—

The Court: The testimony was appeal was not practical, as I recall.

Q. Is that what your opinion was, that it was not practical?

A. It was not practical or it was futile to attempt to appeal a Temporary Restraining Order?

Q. How did you come about that knowledge?

A. That was from Mr. Wyman.

Q. And before you made the decision that it would go, (p. 47) "We are going to publish notwithstanding the order of this Court," did you consult with counsel concerning whether there were any means in which you could obtain a stay of the order or vacation of the order or whatever, you personally?

A. I did not personally speak with the lawyers. Mr. Wyman is our regular liason with the attorneys; and I respected his opinion and the information he was relaying to me.

Q. And his opinion was such that you couldn't do anything about the Temporary Restraining Order, at least until November 15, when the matter was scheduled for hearing again?

A. My understanding was, yes, that there was no appeal from a Temporary Restraining Order.

Q. Did anyone ever call to your attention that the Court afforded the Providence Journal the opportunity

for a hearing on November 14 rather than November 15 of 1985 concerning this Temporary Restraining Order?

Mr. Cavanagh: Objection.

The Court: Basis?

Mr. Cavanagh: Relevance.

The Court: There's been some talk here of timely publication. Overruled. You may answer (p. 48) the question.

A. I became aware of that much later; but to me that would have been irrelevant; because the crucial thing was not to halt publication under the Prior Restraint for even one edition of "The Journal".

Q. Am I correct correct in concluding that even if the Court said, "We will give you a hearing at midnight of the 13th", you would have published?

Mr. Cavanagh: Objection.

The Court: Basis?

Mr. Cavanagh: Relevance.

The Court: Overruled. You may answer the question.

A. Yes, midnight would have been too late. We would have missed the first edition of "The Journal."

Mr. Curran: Excuse me a minute, your Honor.

The Court: Certainly.

(Pause)

Q. Mr. Hauser, it is not your position that the Temporary Restraining Order issued by this Court on No-

vember 13, 1985, it's not your position that (p. 49) it was unlawful as such; is it?

Mr. Cavanagh: Objection.

The Court: Well, we've had all kinds of legal opinions back and forth here. I'm going to allow it.

A. I would say that I don't have the legal background to answer that question. I consider it a legal question rather than a journalistic question.

Q. Do you consider that legal matters are for the Court rather than for the Providence Journal?

Mr. Cavanagh: Objection.

The Court: Overruled. You may answer the question.

(PREVIOUS QUESTION READ BACK BY COURT REPORTER)

A. I would say in putting out "The Journal" we have to deal with legal questions every day, so certainly legal questions are for us to deal with. I'm simply not competent to answer that one you asked me.

Q. In Exhibit 3 that's attached to the stipulation of facts, and I will tell you that Exhibit 3 is "The Evening Bulletin" publication of Thursday, November 14, 1985, with which I'm sure you're (p. 50) familiar, that exhibit has the headline "Court, Journal Clash Over Use Of Tapes," do you know what the headline writer meant by that?

Mr. Cavanagh: Objection.

The Court: Basis.

Mr. Cavanagh: I don't know how he can say what the headline writer meant by that. He could ask—he could answer what he thinks it means.

The Court: This witness is the executive editor of "The Journal"; isn't he?

Mr. Cavanagh: That's right; and that particular question—

The Court: And I take it the headline writer works for him.

Mr. Cavanagh: The objection, your Honor, goes to the state of mind of the individual headline writer. If he wants to ask him what—

The Court: The question is does he know. He can answer that question. Overruled.

Mr. Curran: Let's withdraw the question.

Q. Mr. Hauser, what does "The Journal" mean in its headline in Exhibit 3, "Court, Journal Clash Over Use Of Tapes"?

Mr. Cavanagh: Your Honor, could the (p. 51) witness look at the headline in the paper?

The Court: Surely.

Mr. Cavanagh: Thank you.

Mr. Curran: Why don't you give him your copy.

Mr. Cavanagh: Okay.

A. The headine writing is sort of a shorthand art; and in this case the comma serves as an "and," so the headine is saying the Court and the Journal are clashing, meaning a dramatic word for disagreeing, over use in this case of publication of the tapes.

The Court: Were there any tapes to begin with?

The Witness: The use of the word "tapes" is, again, a shorthand—

The Court: For what?

The Witness: —term for the airtels based on the transcripts of what were originally tapes.

The Court: The fact of the matter is, there were no tapes; isn't that so; these are summaries made by FBI agents of what was on the tapes?

The Witness: No, sir. I thought they (p. 52) were originally tapes and then they were transcripts and then they were these summaries.

The Court: Have you ever seen a transcript of these these tapes?

The Witness: The tapes and the transcripts were destroyed some years ago.

The Court: This story isn't based on tapes at all.

The Witness: No, but the airtels are based on transcripts which are based on the tapes. It's a shorthand. It's a way we refer to these as "The Patriarca Tapes." The initial material was taped. That was the original form of the material.

Q. And you refer to them as tapes. The court never referred to them as tapes; did it?

A. I don't know.

Q. The Court Order doesn't refer to any tapes; does it?

A. No, not that I know of.

Q. The Journal never had any tapes that were produced by the Federal Bureau of Investigation or the United States Government under the FOIA?

A. No, we asked for the tapes; but we understood that they had been destroyed.

(p. 53) Q. In fact, you had participated in a rather protracted piece of litigation pertaining to the production of these airtels and reports?

A. That was a — in a previous Freedom of Information Act request, yes.

Q. Had gone all the way to the First Circuit Court of Appeals?

A. Yes, that was a previous request, not the one that gave us the tapes in this instance or gave us the airtels.

Q. By the way, Mr. Hauser, based on your experience with the law and particularly with that particular case, one appeals from this court to the First Circuit Court of Appeals in Boston; is that true?

A. That's my understanding.

Q. An hour away; is it not, by travel?

A. If it's in Boston, that's correct.

Q. And Boston is how far away, for the record?

A. Forty-five miles.

Q. Do you know how Mr. Wyman became aware that it would be, or believed that it was impractical or futile to seek any relief by appeal from the order of November 13, 1985?

A. No, I don't know for sure.

Q. But, in any event, he told you that that was so?

(p. 54) A. That's correct.

Q. His belief was that it was so; correct?

A. Correct.

Q. Let me catch another topic, if I might. There's the "Providence Journal" and there's "The Evening Bulletin"; is that true?

A. That's correct.

Q. And each publishes an edition or more on it's own, so to speak?

A. Several editions are published under each name.

Q. Who would have the information as to how many editions there were—how many newspapers were published on November 14, 1985 by the "Providence Journal"?

A. The precise information is kept by our Circulation Department; but normally we do not keep records on a day-by-day basis, but keep — the records are averaged on a monthly basis.

Q. What is the average production for circulation and distribution for the "Providence Journal" on a daily basis?

The Witness: At the present time?

Mr. Curran: Yeah, at the present time.

A. I would say between 90,000 and 95,000 copies (p. 55) for the "Providence Journal" and between 115,000 and 120,000 copies of "The Evening Bulletin."

Q. That includes all editions of both?

A. That would be the net paid — that would be the actual sales of the newspaper. We print more copies than that.

Q. And that's today's average. Would that also pertain to November 14, 1985 as best you can tell?

A. Approximately the same, yes.

Q. Approximately the same. The paper sells for 35 cents a piece, does it, on a daily basis? Maybe you don't know that.

A. I think they're 30 cents. I don't—

Q. Thirty cents?

A. Thirty cents a copy.

Q. Maybe we pay more down in South County.

The Court: This masthead says 35 cents.

The Witness: I don't have to buy a copy.

Q. Mr. Hauser, I'm not going to hold you to that one. Just tell me who I would speak with.

A. The Circulation Department or anybody, the front page—

Q. Whose in charge of Circulation?

A. Howard Sutton is the director of Circulation and Sales.

(p. 56) Mr. Cavanagh: Your Honor, I know you're very familiar with the distribution of the newspaper.

The Court: Probably more familiar than I ought to be. I listened to it at least twice.

Mr. Cavanagh: To help Mr. Curran out, I might just point out that the newspaper sells the papers wholesale to carriers and stores, not for 35 cents.

The Court: I see; that is, whoever buys it pays 35 cents at least. Right.

Q. Mr. Hauser, do you recognize this?

A. Yes, I do.

Q. What do you recognize it as?

A. That's the "Rhode Island Almanac," which is a publication of the Providence Journal Company.

Q. Showing you page 213, without reading it, what does that represent?

A. The figures represent the net paid circulation of "The Journal" and "The Evening Bulletin" and that would be the—a year's average, the year ending March 31, 1984.

Mr. Curran: I just ask that this be marked for identification purposes at this point.

The Court: All right, what do we have?

(p. 57) Mr. Curran: We have a 1985 Journal Bulletin "Rhode Island Almanac."

The Court: This is Prosecution 2?

Mr. Curran: Two for identification.

Mr. Cavanagh: No objection.

Mr. Curran: Unless you have—do you have any objection to it being marked as a full exhibit at this point?

Mr. Cavanagh: Yes.

Mr. Curran: I thought you would.

The Court: Something to take judicial notice of anyway if it's significant.

Mr. Cavanagh: It's irrelevant I think. That's why I also object.

The Court: That's the question. Anything further?

Mr. Curran: I haven't anything further, your Honor.

Mr. Cavanagh: I have nothing further for this witness, your Honor.

The Court: Well, I have a couple of questions. Mr. Hauser, you said that you were in possession of this material lawfully; is that right?

The Witness: Yes, sir.

(p. 58) The Court: And that means that—I take it what you mean is that you obtained it upon request through the FBI and the Freedom of Information Act?

The Witness: Yes, sir.

The Court: Now, you were with the Journal, I take it, in 1979?

The Witness: That's correct.

The Court: And you were familiar with the litigation that went to the Court of Appeals for the First circuit, Providence Journal Company versus The Federal Bureau of Investigation; is that so?

The Witness: I'm familiar with that, yes.

The Court: Are you familiar with the basis upon which the Court of Appeals held that the Journal Company was not entitled to the information at that time?

The Witness: I believe it had to do with the privacy of Raymond L.S. Patriarca.

The Court: Is there anything in the—well, do you think it was just limited to Raymond L.S. Patriarca?

The Witness: I believe so, sir. He was (p. 59) the one that brought action.

The Court: And I take it the Journal was seeking the same information at that time as it sought later in 1984?

The Witness: Yes, sir. After Raymond L.S. Patriarca's death we renewed the request.

The Court: But you were aware that at least insofar as Raymond L.S. Patriarca, the Court of Appeals had ruled privacy was the basis on which the Government justifiably declined to make the material available the Providence Journal?

The Witness: As I recall, that was the Government's position, yes.

The Court: There was, at least in your mind, some definition of what our privacy rights were at that time; right? It wasn't this vague concept; was it?

The Witness: No, except, I would say that was not determined in a court of law but was simply the position of the Government, of the FBI.

The Court: Well, didn't the Court of Appeals hold, or did they, that because of your obstructing Mr. Raymond L.S. Patriarca's privacy rights which arose because the Government had obtained this information illegally in violation (p. 60) of the Fourth Amendment, that this in-

formation would not be made available to the Journal? Wasn't that the case?

The Witness: That's correct. I do recall that, yes, sir.

The Court: So you were aware that information that is obtained in violation of the Fourth Amendment of the Constitution by the Government, the disclosure of that information violates a person's privacy?

The Witness: Only that in that specific case that was the ruling. No, I was not aware that.

The Court: The only difference here is that instead of the Government publishing the information, the newspaper is publishing the information; right?

The Witness: That's correct. But it's a different case and involves a different person. In other words, my understanding was not that the previous case set a standard of privacy for all time, that it only dealt with the privacy of Raymond L.S. Patriarca.

The Court: That the son's rights might have been different than the father's?

(p. 61) The Witness: Yes, sir.

The Court: Now, do you see any problem with a rule that says your government and my government may obtain information in violation of the Fourth Amendment and may make that available to a private citizen or a newspaper and that that information may then be published with immunity; do you see any problem in our society with a rule like that?

The Witness: I don't see a problem with the newspaper making a lawful request for that information regardless of how the Government obtained it.

The Court: Suppose that the Government decided to invent information about anyone here, invent it, and then if somebody requests it, the Government can make it available and that person can publish it?

The Witness: I would say that a responsible newspaper would look very carefully at the material, would attempt to determine its accuracy; and if it felt the Government had manufactured it, no, it would not publish it.

The Court: What did you do here to check that out? Because you didn't have the tapes. All (p. 62) you had was the airtels and the logs.

The Witness: In this case we did work with the materials working with the dates. Our reporter did everything possible to confirm the—connect the events described in those airtels with actual events at the time.

The Court: Are you satisfied with the situation in which the Government obtains information in violation of the Fourth Amendment and discloses that information under the Freedom of Information Act that that information may then be broadcast to the public? Are you satisfied with that.

The Witness: If the Government releases that information, then it can be published, yes, sir.

The Court: This is information which could not be used in a court because it would be suppressed, obtained in violation of the Fourth Amendment, but if the Government takes that material which otherwise would be suppressed in court proceedings and makes it available to a

newspaper under the Freedom of Information Act, then it may be published; right?

The Witness: Yes, sir, I would say the (p. 63) Court proceedings with designed to protect—very carefully protect the rights of a defendant which would not be involved outside a courtrom situation.

The Court: Except for privacy rights.

The Witness: Except for privacy rights, which I think are less well-defined than the rights of a defendant.

The Court: But in this case they were well defined by the First Circuit Court of Appeals with respect to this very material. You say it's for a different person.

The Witness: Yes, sir. I understand it was the same general material, but it was a specifically different person.

The Court: Do you have any further questions?

Mr. Cavanagh: I don't, your Honor.

The Court: You may step down.

Mr. Cavanagh: At this point the defendants would rest subject to the right to argue, your Honor.

The Court: How much do you have, Mr. Curran?

Mr. Curran: I have two witnesses, brief.

(p. 64) The Court: Go-ahead.

Mr. Curran: Want to give us a couple of minutes? Let me call to Court's attention something I failed to earlier. There's a supplemental agreed statement of facts attached to that document.

The Court: Go-ahead.

Mr. Curran: Mr. Cicilline.

JOHN F. CICILLINE (Sworn)

DIRECT EXAMINATION BY MR. CURRAN

The Clerk: State your full name and spell your last name for the record.

The Witness: John F. Cicilline, C-i-c-i-l-l-i-n-e.

Q. Mr. Cicilline, you are a practicing attorney in the State of Rhode Island?

A. I am.

Q. And as such you're also a member of the Bar of the United States District Court of the District of Rhode Island?

A. I am.

Q. In that capacity, are you the attorney that filed a lawsuit on behalf of Raymond J. path Patriarca?

A. I am.

(p. 65) Q. Against the Providence Journal?

A. Yes.

Q. That was filed on what date, if you recall?

A. November 8.

Q. 1985?

A. 1985.

Q. And that is the suit that has a complaint concerned with the privacy rights of the plaintiff, Raymond J. Patriarca, as they relate to materials that you had learned had come into the hands of the Providence Journal?

A. That's correct.

Q. In the course of that litigation, you sought a Temporary Restraining Order from publication—dissemination of printing publication of materials based on those materials that were given by the Government to the Providence Journal?

A. I did.

Q. As a consequence of that prayer for a Temporary Restraining Order request, did you meet with the Court?

A. I did.

Q. What was the date?

A. November 13, 1985.

Q. Where did it take place?

(p. 66) A. In Judge Boyle's chambers.

Q. What time of day do you recall did it take place?

A. It was the afternoon, that's all I member.

Q. At the time were you engaged in litigation or trial elsewhere?

A. No.

Q. You were not. But it was in the afternoon as you best recall?

A. I believe so.

Q. Can you establish whether it was at 1 o'clock or 2 o'clock or any other time without my suggesting when it occurred?

A. I really don't. I believe it was noontime; but I'm not sure of that.

Q. Do you know yourself whether the Court had something pending here in this courtroom at that time?

A. I don't.

Q. But, in any event, you were contacted and did attend a meeting with the Court?

A. Yes, sir.

Q. Who else was present, if you recall?

A. Mr. Hindle, Mr. Cavanagh, Mr. Medeiros. Those are the only ones I remember specifically.

Q. Mr. Hindle, Mr. Cavanagh, and Mr. Medeiros are all (p. 67) members of the firm Edwards & Angell?

A. I believe so.

Q. And they were appearing on behalf of?

A. They were appearing on behalf of the Providence Journal and one of the of the television stations.

Q. WJAR, Channel 10?

A. I believe so, yes.

Q. Who represented the United States Government, if anybody?

A. I believe both Mr. Almond and Mr. Sammartino represented them and were present.

Q. At that conference, did the Court inquire of you what the nature of the cause of action was on behalf of Raymond J. Patriarca?

A. We had some discussion about it; but I'm certain the Court was aware of what the nature of the action was; because the papers had been filed, I believe some five days earlier?

Q. I didn't hear all of that?

The Court: He said he believes the Court was aware of the nature of action because the papers had been filed some five days earlier.

Q. And had you filed any additional papers in the meantime before that meeting?

(p. 68) A. I don't believe so.

Q. Was there a discussion as to whether the Court should issue a Temporary Restraining Order?

A. There was.

Q. Was there opposition expressed by counsel for the Providence Journal?

A. There was.

Q. Were both parties—just these parties, Mr. Patriarca's lawyer, you, and Edwards & Angell heard by the judge as to their respective positions on the issuance of that order?

A. Yes.

Q. Mr. Sammartino or Mr. Almond on behalf of the United States Government, were they too heard on whether such an order should issue?

A. Yes.

Q. Was there any discussion as to if the order did indeed issue, when the Court would address the question of a preliminary injunction?

The Witness: Was there discussion?

Mr. Curran: At that time, yeah.

A. Yes.

Q. And was it the intention of the Court as expressed at that conference that if the Court did issue an order on November 13, 1985, it would give the (p. 69) parties a quick hearing as to whether it would also issue a preliminary injunction?

A. Yes. I believe both sides were surprised that the judge's ruling was stated so quickly. I pointed out to the Court that I had a matter that was supposed to be reached on the following morning before Judge Kiely but I would contact Judge Kiely to work that out. I believe counsel for the Journal and Channel 10 indicated that they needed more time to properly address the issue than the following morning; and the judge on the basis of that, in my opinion, continued it an additional day or several days.

Q. Am I correct in my understanding that the Court indicated it would hear the parties on November 14, 1985 on your prayer for a preliminary injunction on behalf of Raymond J. Patriarca?

A. That is correct.

Q. And as far as you know, at the request of counsel for the Providence Journal, it was scheduled for November 15 rather than November 14?

A. It was scheduled because the Court was accommodating everyone. The Court was willing to hear it the following morning; and I believe counsel indicated that that was too short a notice (p. 70) to prepare for such an argument.

Q. You, on behalf of Raymond J. Patriarca, did not ask that it go over to November 15; did you?

A. I don't know what words I used; but I certainly didn't have any objection to it; because I, too, wanted the additional time.

Q. But you were—you did indicate to the Court that you probably could straighten out your attendance before Judge Kiely on that matter and be in attendance on November 14 if the Court so required?

Mr. Cavanagh: Objection.

The Court: I suppose the objection is it's leading.

Mr. Cavanagh: Yes, your Honor.

The Court: I'll sustain the objection but I must say I'm not sure it's going to do any good. Let's have the next question.

Q. What did you indicate to the Court as far as November 14, 1985 was concerned?

The Court: Did you indicate to the Court what Mr. Curran just said?

A. Yes, I did.

Mr. Curran: You see. I've learned the hard way.

(p. 71) The Court: Go-ahead.

Q. What did you indicate to the Court concerning November 14?

A. I believe I was suppose to begin a trial the following morning.

The Court: He said he's going to get in touch with Judge Kiely.

Mr. Curran: The Court remembers that.

The Court: No, I just heard him say it. Go-ahead.

Q. Proceed.

A. I indicated that I would get in touch with Judge Kiely to explain to him I'm required here and I was certain he'd allow me to come.

Q. Do you recall if at that meeting in chambers with Chief Judge Boyle, whether the Providence Journal attorneys who you have mentioned raised the question of Subject Matter Jurisdiction?

A. No, I don't really remember that specifically.

Q. You don't really remember that?

A. Specifically, no.

Q. Do you remember whether they argued to the Court about Prior Restraint of their right to publish the materials?

(p. 72) A. There was some discussion of that, yes.

Q. That was discussed?

A. Yes.

Q. Did they address in any of their discussions with the Court the privacy right of your client, Raymond J. Patriarca, as it related to this Prior Restraint?

The Witness: Did counsel for the Journal discuss that?

Mr. Curran: Yes.

A. I don't believe so.

Q. You certainly did.

A. I believe so.

Q. As a consequence of the meeting, a Temporary Restraining Order did issue?

A. Yes.

Q. And scheduled a further hearing on the prayer for preliminary injunction for November 15, 1985?

A. That's correct.

Q. 1985?

A. Yes.

Q. And there is no question in your mind that the Providence Journal was represented and was aware of the issuance of that order?

A. There was no question.

(p. 73) Q. Who prepared the order, by the way?

A. The order was prepared, I think, in advance. I think Judge Boyle at that time hand wrote an amendment to it. The handwritten—the addition to the typed motion was signed by Judge Boyle. I believe it was copied in the courthouse and copies were distributed. I don't know whether they were distributed that night or the next day; but they were distributed.

Q. Referring to what I've designated as Exhibit 1 in the stipulation of facts, is that a copy of the order?

A. It is.

Mr. Curran: No further questions.

CROSS-EXAMINATION BY MR. CAVANAGH

Q. Mr. Cicilline, you recall the attorneys for the media at that conference discussing and arguing to the judge that this injunction you were requesting was a Prior Restraint; correct?

A. I do.

Q. And do you recall them pointing out to the judge that there was no interest argued by your side of the case that would justify a Prior Restraint; correct?

(p. 74) The Witness: Do I recall if you were arguing that?

Mr. Cavanagh: Yes.

A. Yes. Yes, I do.

Q. Did I argue that?

A. I don't know whether you did, but someone did.

Q. Is your memory of that conference clear?

A. Not really.

Q. Do you know if I was there?

A. I believe you were.

Q. If I suggested—

A. I'm sorry, you were not. You were not. It was Mr. Medeiros who did most of the talking.

Q. And do you remember what you argued?

A. There was a discussion over whether Freedom of Information Act appeals could be taken in this fashion. I believe the Government felt very strongly about that situation. I remember discussion about—the judge pointing out that although the administration had changed and that there had been some other policy changes, that the Constitution had not changed; and it seemed to me that the issue centered on whether a few hours to reflect on the matter or not would solve it. The (p. 75) judge wanted some some time to think about it, wanted some time to see

some law in the cases, thought we'd all agree that that would and I remember the substance, the judge saying, look let's get some law on this, let's make a decision what it's about it. I didn't feel very strongly that we would ultimately prevail. It was a holding pattern as far as I concerned as far as the Court.

Q. In fact, you were surprised that you even got a Temporary Restraining Order; weren't you?

A. I was.

Q. And, Mr. Cicilline, at no time did the lawyers for the Providence Journal indicate that they would consent to the issuance of this order; did they?

Mr. Curran: Objection, your Honor. Whether they consented or not at that time is irrelevant.

The Court: This is cross-examination. Overruled. You may answer the question.

A. They did not.

Q. In fact, from what you remember, they were very clear in their arguments that this would be a Prior Restraint; right?

A. Yes.

(p. 76) Q. And you mentioned earlier that there was a discussion about the Freedom of Information Act and appeals from it and Mr. Sammartino raised the question that the Court didn't even have jurisdiction under the allegations that you had made in the complaint; didn't he?

A. He did.

Q. And you, in fact, were resting on your papers, the ones you had filed, and assumed the Court would be familiar with prior to the conference; correct?

A. Yes.

Mr. Cavanagh: Thank you.

REDIRECT EXAMINATION BY MR. CURRAN

Q. And, Mr. Cicilline, it was clear to you, was it not, from the remarks made by the judge at the meeting, that he recognized what we were discussing here, or you were discussing here a question of a Prior Restraint on the First Amendment rights of the the Journal? He recognized that; did he not?

A. He did.

Q. He also recognized that you were concerned with the rights of Mr. Patriarca, his rights of privacy as you spell them out in the complaint?

(p. 77) A. Yes.

Q. And, in fact, all he asked for was a little time to give due consideration to the clash of the so called Fourth Amendment rights of your client and the First Amendment rights of the Providence Journal?

Mr. Cavanagh: Objection. The Court didn't ask for anything. The Court entered an order.

The Court: What do you say to that?

Mr. Curran: I wasn't there, your Honor.

The Court: All right, sustain the objection.

Mr. Curran: Sustained?

The Court: Sustained.

Mr. Curran: Thank you.

Q. As a result of the remarks of the Court, was there any doubt in your mind it was aware when it issued this Temporary Restraining Order that there was this clash between the rights of your client and the rights of the Journal?

A. I believe the judge indicated that he recently attended some kind of a conference that had to do with this new conflict and indicated to us that it was an immerging conflict that might (p. 78) supersede the fight between the First and Sixth and discussed that at some point that was the seriousness of the problem.

The Court: The first and the sixth?

The Witness: As serious as the First and the Sixth.

Mr. Curran: Could have been the Fourth.

The Witness: It was as serious. The First and the Fourth problem is as serious as the First and the Sixth problem; and it was—there was a discussion about that.

Q. And there's no doubt in your mind that both sides were asked to come to court on the 15th and bring some authorities to try to assist the Court in making a determination on the prayer for preliminary injunction?

The Witness: I'm sorry. I didn't understand that.

(PREVIOUS QUESTION READ BACK BY COURT REPORTER)

A. There is no doubt that the Court asked that.

Mr. Curran: No further questions.

Mr. Cavanagh: No further questions.

The Court: All right, you may step down. How long is this next witness going to take?

(p. 79) Mr. Curran: Just a moment, your Honor.

Mr. Curran: I have one question of Mr. Sammartino whose here under subpoena.

EVERETT SAMMARTINO (Sworn)

DIRECT EXAMINATION BY MR. CURRAN

Mr. Curran: If I said one, would you give me a couple?

The Court: That means two.

Mr. Curran: The Court is aware that he's assisting the United States Attorney.

The Court: We will take judicial notice of that.

The Clerk: State your full name and spell your last name for the record, please.

The Witness: My name is Everett Sammartino, S-a-m-m-a-r-t-i-n-o.

The Court: And your occupation?

The Witness: I'm Senior Assistant United States Attorney.

Q. Did you attend a meeting on November 13, 1985 relative to the case of Raymond J. Patriarca versus the Providence Journal, the FBI and others?

A. I did.

Q. What time of day was it that that took place?

(p. 80) A. I recall it being about 12:30 p.m. I had had a conflict, slight conflict because I had a prior meeting with Judge Selya; and I asked Mr. Almond to cover me until I was able to appear before Judge Boyle. Judge Selya finished his meeting prior to the 12:30; and I made it to the 12:30 meeting with Judge Boyle.

Mr. Curran: No further questions.

Mr. Cavanagh: I have no questions.

The Court: All right, you may step down.

Mr. Curran: Thank you. We rest, your Honor.

The Court: All right, do you have anything further?

Mr. Cavanagh: Not by way of evidence, your Honor.

The Court: All right then, we'll take a recess; and I'll hear you after the recess. Court will be in recess for a few minutes.

(RECESS)

Mr. Curran: If it please the Court, Mr. Cavanagh is going to argue; but before he does, I would like to indicate we're not resting the case in its entirety. In our brief I've indicated that the petitioner requests that we be allowed to (p. 81) present evidence as may be appropriate of respondent's financial circumstances at a later date. Whether we have to do that, I suppose is depending on what the Court rules.

In addition, I'd ask that we have marked as a full exhibit the editorial pertaining to the Pawtucket matter, Exhibit No. 1.

The Court: What's the reason for that?

Mr. Curran: What is the reason for marking it as a full exhibit?

The Court: Yes. How is it relevant here?

Mr. Curran: I think it shows that the Journal will take a position on a matter that suits it at the time; and I think as we will argue later, I think that's what it's position was there; and whether it has another position here is a matter for argument. I think there's material in there that's relevant.

The Court: I think it's just a little too collateral for me to do get into at this point. I'll let you mark it for identification.

Mr. Cavanagh: Your Honor, it was difficult for me to think of an appropriate way to start this argument. I guess I should say that (p. 82) the special prosecutor's brief started off with the statement, "This is a simple matter." I will say to you it is not a simple matter at all. I think you know that. And that's my first point, that this case represents, I think, a classic conflict between strong rights; and the Providence Journal represents the newspaper, but in a larger sense it's position in this case involves the right of free press and really in a sense it represents the right of all people under the first amendment. In some senses a newspaper has a peculiar situation because they've [sic] involved in publications all the time; but the first amendment is for the people and for many years it's been recognized—

The Court: So are the other nine.

Mr. Cavanagh: That's right. And the other interest which is here is the—is your interest, and not you personally—

The Court: I don't have an interest in the case.

Mr. Cavanagh: That's right. You have an interest in the institution of the Court, the institution of judiciary; and I guess what I'm suggesting is that that's the level I think this (p. 83) case ought to be treated on, not The Journal versus the U.S. District Court Judge Boyle, but the question of the judiciary and a court order and the right of the free press.

The Court: Let me get into this without taking a lot of time; because it seems to me this gets right to the heart of the problem. I've read the briefs, of course. It seems to me that what the defendant Journal is claiming here is that under no circumstances and at no time may a Court restrain a newspaper from publishing anything except with respect to troop ship movements apparently. In Nia (sic) versus Minnesota, is that the argument that there is never a time or a circumstance which can rise under which a—the newspaper can be restrained from publishing anything?

Mr. Cavanagh: —Information--

The Court: Apart from secret government information and apart from obscenity.

Mr. Cavanagh: That's right. Apart from those exceptional situations which have been recognized in the cases and clear and present danger, danger to the society at large, clearly exceptional circumstances, and, of course, when (p. 84) the information has been lawfully obtained. If there was a particular crime—

The Court: You cite a case in which the information was obtained by a reporter breaking and entering into

somebody's premises, and the D.C.—was it D.C. Circuit, or the district court down there said they could use it.

Mr. Cavanagh: That's right.

The Court: You rely on that. It isn't that the information was rightfully or wrongfully obtained.

Mr. Cavanagh: You may disagree with that; and that isn't our case cause. We didn't do that in this case.

The Court: What do you say about the First Circuit's decision here? I don't want to get into the merits of the case; but we get right back to Judge Coffins opinion where it isn't too terribly clear that he's saying "This information is barred by the Freedom of Information Act or is barred a Fourth Amendment privacy right," but at least the opinion admits of that construction. All right. Now, what do you say to a situation where there is a possible construction that as to this party it has been denied this information by (p. 85) a court after consideration for the privacy issue, that upon an application of this sort, that that isn't different from the so called "pure speech case" that you talk about, like a baseball score or something like that?

Mr. Cavanagh: That would be the position, your Honor, you're saying this really isn't a prior restraint because there's been a court order already issued, that as a matter of law these documents can never, ever be given to anybody; and I respectfully say that that is not what that case stands for—

The Court: I agree. I agree that there is the argument that that is not what that case stands for; but you have to agree that it is possible that case does stand for that proposition. And if it does, then where does it lead

you? Is this the pure speech case; or is a case where the a court has already decided that the Providence Journal Company cannot have this material?

Mr. Cavanagh: It isn't; and that was—

The Court: I heard your construction of that; but I have some trouble finding the language in it that says that. All right.

(p. 86) Mr. Cavanagh: Your Honor, on that Wednesday afternoon, I suggest that what should have happened was that the order should have been denied; because—and that is because this case clearly called into question pure speech and a prior restraint. And the argument—

The Court: And the formula is pure speech equals no prior restraint, period, exclamation point?

Mr. Cavanagh: No, the scale indicates that pure speech, prior restraint puts that scale down to here, and what you put on the other side of scale has to be very, very heavy. And what was put on in this case was something that didn't even move the scales. In fact, Mr. Cicilline was rather candid, he was very surprised he prevailed. Now, I understand the problem the Court has.

The Court: That happens to lawyers all the time.

Mr. Cavanagh: But in this case it's interesting I think; because it really—it goes right to the dilemma, if you will, that the Providence Journal faced.

The Court: What's the dilemma?

Mr. Cavanagh: The dilemma that is if it (p. 87) is a prior restraint, which they honestly—and I think no one

can question that, that they honestly believed it was—then what was happening is they were losing their First Amendment rights by the minute.

The Court: Is it your contention that the "New York Times" lost its constitutional rights by the minute in the Sullivan case?

Mr. Cavanagh: You mean the Pentagon Papers case?

The Court: The Pentagon Papers case. Because the Times did not publish while that matter was under consideration by the Court?

Mr. Cavanagh: That's right.

The Court: Was that a prior restraint?

Mr. Cavanagh: And that was a case where the national security and the implications thereof were on the scales and they made a judgment that under the circumstances they would abide—obey the order because this was a closed case.

The Court: So who makes the decision that Mr. Curran is pointing out here the publisher or the Court?

Mr. Cavanagh: Well, in the "New York Times" case the Court made a decision—

(p. 88) The Court: They restrained it; didn't they?

Mr. Cavanagh: That's right.

The Court: All the way through, until the Supreme Court decided the case.

Mr. Cavanagh: Well, actually, in the lower court the Times won. It was only the Second Circuit to the Supreme

Court; but they made the judgment; and the point is that the circumstances were such that that was not one which was obviously a prior restraint. It was a very close question; and the New York—Under all of those authorities. And the Government's argument in the Pentagon Papers was that national security and the implications related to that were at stake; and the "New York Times," "Washington Post" I'm sure were aware of that.

In this case, we don't—was there anything that close? Not at all. There wasn't. What it was was that there was an interesting, and I agree, somewhat new, question of privacy, the future of privacy which I understand you attended a conference on, and it was in those circumstance that you did that. Now, what I believe should have been done if the First Amendment had been (p. 89) followed through—

The Court: Let's get that straightened out; because at the time I was sitting right next to Mr. Medeiros at lunch in a hotel in San Juan and Arthur Miller was speaking to all of the judges of the First Circuit plus about 800 lawyers; and the topic of his discussion, which lasted for about an hour, was the emerging clash between the Fourth Amendment and the First Amendment. And he started out by observing that a marine who had prevented President Ford, I think it was, from being assassinated was a national hero for three days until someone published a story that said that he was a homosexual; and the question was whether that aspect of the story ought to have been published. This is what Miller's discussion was.

Mr. Cavanagh: And the answer to that would be, if it shouldn't have been published, there would be a judg-

ment in money damages for him, not a prior restraint of the publication about the fact that he was a homosexual.

The Court: Professor Miller being Professor Miller didn't give any answers to the question.

(p. 90) Mr. Cavanagh: Right. You fortunate or unfortunate enough, were able to come back and have a firsthand experience with this.

The Court: That's right.

Mr. Cavanagh: Again, your Honor, my point was and what should have happened, I respectfully suggest, that is the temporary restraining order should have been denied; and then the people who had the First Amendment right to decide to publish without a direct order telling them not to, without—where they make the editorial judgment. And that's the problem. That's the dilemma they were in. I know Mr. Curran will get up, "What was the big rush? Why did you have to do this?" Because in fact they were going to miss one cycle of publication under a Court Order which they believed infringed and violated clearly their First Amendment rights. That's an important precedent, an important principle.

The Court: Your premise is that at no time, under no circumstances given this situation, even involving a violation of one of the Bill of Rights; one of the provisions of the Bill of Rights, that a Court may restrain a newspaper from (p. 91) publishing at least to give it time to find out what the law is; right?

Mr. Cavanagh: That's right. That's right. And, in fact, that, number one, that the Fourth Amendment right was not even alleged with respect to the Providence Journal. The only claims were that this was an FOIA appeal

and this was an Omnibus Crime Control Act. The Fourth Amendment was mentioned; but that was not a basis for jurisdiction at all before you. The point is, it involved the Patriarca tapes, it involved—

The Court: I don't want to get too far into this; because there's no transcript of that conference. But I have a rather clear recollection of being told that the Freedom of Information Act was explicit with respect to restraints, that under the Freedom of Information Act, the Court had no jurisdiction to do anything; and my recollection was, and it may be defective, but my recollection was it didn't seem to me that the Freedom of Information Act had changed the Constitution or the Fourth Amendment. I think that was the discussion.

Mr. Cavanagh: Your Honor, the Fourth Amendment was not alleged as a ground by this (p. 92) Plaintiff.

The Court: It's in the complaint.

Mr. Cavanagh: I know, but not—it's just mentioned. And that's very important; because when you put on the scales, you don't have a the exceptional circumstances. And and so what happens and why are we alleging that there shouldn't be any contempt in this case? I think it's because it's a classic confrontation; and it's a situation where when looked at, the First Amendment is paramount; and it's difficult because the public perception of the First Amendment's primacy, if you will, in this instance is that it looks like the newspaper can do whatever they want. Now, that isn't—in truth, I don't think that's what you know this case stands for. It does not stand for that. This case stands for a unique, I would say rare, situation where the First Amendment and the administration of justice

and dignity for the Court clash. And you at one point said that your concern was for the public perception of this; and the Providence Journal shares that concern. And that, of course, brings us right back into the clash. In no way are they delighted to be in this circumstance. No way were (p. 93) they delighted to be deciding on that Wednesday night whether or not to follow this Court Order under the circumstances or do what they thought was what they had to do journalistically, not only for themselves, but for newspapers not only presently but in the future; and I know you're familiar with that tradition and that is what this case represents. And the problem of this case is—

The Court: There's no future for this kind of a case; is there? Isn't it very clear under the Omnibus Crimes Act that you cannot do this sort of thing now?

Mr. Cavanagh: Under these particular circumstances?

The Court: Yeah, it's very clear that Congress has made it a felony; and anybody who uses or discloses this information is committing a felony. That's at least been a law since 1968. The only way that this situation can possibly escape that, if it does, and it's not too terribly clear that it does, is it was because the recording was made before 1968, and for no other reason; and the problem with that is that the First Circuit, when it considered this case the first time out, knew that the conversations took (p. 94) place between 1962 and 1965 and still got into an application of the Freedom of Information Act. So it may apply; and it may even be a felony now.

Mr. Cavanagh: That's right; and anyone who commits that felony pays the price.

The Court: Congress is expressing a public policy which says, that if the Government collects information in violation of somebody constitutional rights, nobody can use it.

Mr. Cavanagh: What it says is, if you use it, you will be penalized for the consequences of it; and there's the difference. And earlier, when you asked Mr. Hauser some questions about does he think they can do it with impunity. He believes that the newspaper under the First Amendment can publish with impunity but pay the consequences; and that's all we're talking about. It's the prior restraint that's the problem here. I mean they —

The Court: Isn't there a prior restraint right now?

Mr. Cavanagh: What?

The Court: Isn't there a prior restraint right now?

Mr. Cavanagh: Against the Government, (p. 95) not against the media.

The Court: Under the statutes, there's not prior restraint?

Mr. Cavanagh: They'll go forward with a felony charge, a crime against them.

The Court: All right. That is not a prior restraint?

Mr. Cavanagh: There's a difference.

The Court: I see.

Mr. Cavanagh: On the privacy rights that Mr. Patriarca claims, he has a remedy. If he claims he's been defamed or his privacy's been invaded.

The Court: All right, this is akin to saying it's perfectly all right to take somebody's life so long as you be punished for it.

Mr. Cavanagh: I don't think it is at all, your Honor; because the First Amendment principle, which makes pure speech unique, is that unless we have highly unusual circumstances, the remedy for the publication is after the publication. And I started to refer to this as a very rare case; and I think you're right. It's rare for that reason, the fact that the Omnibus Crime Control Act may deter people from doing (p. 96) that. It may even deter the Government in the future. In any event, this is a case which doesn't ask to go on to new ground at all; it asks you merely to emphasis that the line is drawn there and that's where the line should be drawn and that prior restraints and pure speech, unless in exceptional circumstances, none of which apply here, are inappropriate and invalid and, therefore, the good faith violation of such an order should not be punished by criminal contempt. And the challenge, if I may, for this Court is that it was your order personally; and the problem with it is that we're not dealing in the ideal world, which I think if we did, if we dealt in the perfect world, I suggest to you intellectually if you put up the First Amendment interest in this case against the administration of justice and the interest to be protected, the First Amendment interest would prevail, it would; and that's the challenge for you in this case. How to explain that and take care of the First Amendment interest and not set a precedent that a newspaper that does violate an order in good faith under these circumstances is subject to criminal contempt; because by doing that, there is the chill on the (p. 97) First Amend-

ment rights right there, that's the problem with going in that direction. How it is explained is something that I'm sure you would be able to do; but the problem is there's a principle here; and it's the First Amendment right; and it may sound arrogant, it may seem arrogant; but it's not done so for that reason. It's in very important interest; and I think this case is rather clear when we look at the authorities. And I understand very much how quickly everything had to be done; and the fact that after reflection the order wasn't kept in force. The problem is it had to be done by the "Providence Journal," they made the decision under the First Amendment. When now analyzed, I believe that that First Amendment right is paramount; and there certainly was no criminal intent involved at all. And the suggesting that this was flaunted at the Court, I would hope you wouldn't take that seriously.

The Court: Wait just a minute on that. There's a statement here on behalf of the Journal which states, the fourth a paragraph says they're not — all right, go-ahead.

Mr. Cavanagh: Your Honor, the choice in this case should have been the newspapers whether (p. 98) to publish or not; and they should not have been under the cloud of a prior restraint; and that's the problem. I respectfully ask you to consider this question and deal with it in a way that might take care of the public perception but clearly protects the First Amendment right of the newspaper. It's a very serious question. The precedent that could come out of this is such that it goes beyond this case; and I truthfully believe that this Court is aware of that problem.

Mr. Curran: If it please the Court, I'm not going to read from these materials; but I just want the Court to

know that notwithstanding the fact that all of the law that's involved in this case comes to that much, it's still a simple case. Mr. Cavanagh has argued that what should have happened, you not enter the order for temporary restraining order, possibly would have resolved the whole thing. Well that isn't what happened; and that's why we're here today. What did happen is what makes this case a simple case. This Court entered an order. This court was confronted after hearing counsel on all sides with a situation in which one of the party defendants, the Providence Journal had gone to great lengths to go to the (p. 99) First Circuit Court of Appeals after hearing before Judge Pettine to acquire the materials described as airtels, reports and other materials reporting on illegal wiretaps by the Federal Bureau of Investigation; and in doing so, it was aware of the fact that the Appelate Court, our First Circuit Court of Appeals, granted a stay, nothing would be divulged because we will preserve the status quo so that the rights of anyone involved in the conversations that were heard illegally would not be impinged upon. And Judge Campbell, after Judge Pettine had indicated "I would grant a short stay only so that you can go to the Appelate Court and see what they have to say about it," Judge Campbell, for the Court, granted a stay; and the Court recognized that in the circumstances it was proper.

The Court: Where was that, they recognized it was proper? Was that argued at all?

Mr. Curran: It was not really argued.

The Court: It was an application made to the Circuit after Judge Pettine refused a stay and they granted it. But there wasn't anything in the opinion that there was discusses propriety to stay?

(p. 100) Mr. Curran: No. But the fact is that the Court should be afforded the opportunity to determine, one, whether there is a conflict between Fourth Amendment rights and First Amendment rights, whether there is something here that the Court should be aware of, that there are rights on both sides of the case, so to speak, that someone isn't appealing to the Court on a frivolous brom.

Now, all of the cases that deal with these prior restraints vary. There is not a factual case that we could find that is similar to this one; but there is a pattern that the Court is aware of I'm certain that where the Government, such as the executive branch, seeks to impose a prior restraint or prohibition in its entirety because of secretive materials or whatever that will be looked at closely, that the "New York Times" and the "Washington Post" were entitled to a close examination by the Court as to whether their rights were being infringed upon. Now, there, if you read the comments of the justices that wrote opinions, the Court, so to speak, restepped the system so that none of the materials would be divulged; but "We'll sit if we have to at (p. 101) midnight and hear you." They even stopped a trial so that the matter could go right to the Circuit Court of Appeals and ultimately the Supreme Court. Now, and the Chief Judge was critical of the fact that more time wasn't given —

The Court: Chief justice.

Mr. Curran: I'm sorry I'm in the wrong jurisdiction. Was critical of the fact that you didn't even give us a record that we could ask questions of counsel. Counsel didn't even know what the materials were about. That's significant; because this Court did not know on November 13, 1985 what it was dealing with. There were no reports given to this Court by the Federal Bureau of Investigation or the "Providence Journal," nor were any copies given to Mr. Patriarca so that he could examine whether or not any of his rights were involved.

I ask the Court to assume for the purposes of this argument that there was evidence of criminal activity involving the plaintiff, Raymond J. Patriarca on the tapes, if there was just — it certainly was not published, I'm not saying that; but assume that there was, the threat would be that if it's published, his (p. 102) constitutional rights to claim the Fifth Amendment would be aborted. It would become a matter of public knowledge if there was indeed evidence on that material of criminal activity. Whether that Court had that in mind, I don't know.

The Court: How does that affect his Fifth Amendment rights?

Mr. Curran: It may not. I'm just saying that once the matter becomes public and he has a Fifth Amendment right, it's not worth a heck of a lot if it's out there in the community and some of the members of community may be jurors. Now, whether this Court —

The Court: The problem with this case is that under these circumstances the Government can obtain information illegally and can use it any place but in court. They can't use it in court. That's perfectly clear. But they can use it any place else they want to. They can pass it out on the street corner. That's the problem with it.

Mr. Curran: All right.

The Court: Whether that's a sound policy or not is something somebody's going to have to address most assuredly.

Mr. Curran: That comment by the Court I (p. 103) need not pusue [sic] this point further because the Court was well aware this was a problem; and the Court should have had the opportunity to examine into whether or not Mr. Patriarca's rights were going to be involved or whether the FBI was doing the right thing or whatever and not in the course of its deliberations have a party to the restraining order violated. And after acting in its capacity as judge of its right to publish do so in violation of this Court's order; and that's why it's a simple case, your Honor. And we ask that the defendant be found in contempt of the order — violation of the order.

The Court: I shouldn't ask for this; but if you want some brief rebuttal, I'm prepared to permit it.

Mr. Cavanagh: I don't.

The Court: I don't suppose anyone has a case that considers specifically the question of the First Amendment application to the Fourth Amendment with respect to illegally obtained material?

Mr. Cavanagh: If we had, we would informed the Court of it.

The Court: All right, let me know if you (p. 104) find one.

Mr. Cavanagh: The only other point is I think it might be irrelevant; because I don't think a Fourth Amendment interest is involved or it wasn't at the time you entered the order.

The Court: All right, the Court will take the matter under advisement. Be in recess.

(ADJOURNED AT 12:30 P.M.)

(Reporter's Certification Omitted)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

RAYMOND J. PATRIARCA	)	
	)	
vs.	)	C.A. NO.
	)	85-0707-B
FEDERAL BUREAU OF	)	
INVESTIGATION, ET AL	)	

STIPULATION

(Received March 25, 1986)

In the above-entitled cause it is stipulated and agreed for the purposes of the contempt proceedings against respondents Providence Journal Company and Charles M. Hauser that:

(1) The net worth of respondent Providence Journal Company is in excess of $1,000,000; (2) the net worth of respondent Charles M. Hauser is in excess of $250,000; and (3) the respondents will not contest the imposition of fines, if any, on the ground that the Court did not have sufficient evidence concerning the financial status of the respondents.

/s/ William A. Curran
Special Prosecutor

/s/ Edward F. Hindle

/s/ Joseph V. Cavanagh, Jr.
Counsel for Respondents
Providence Journal Company and
Charles M. Hauser

Dated: March 25, 1986

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

RAYMOND J. PATRIARCA	)	
	)	
PLAINTIFF	)	
	)	CIVIL ACTION
v.	)	NO. 85-0707B
	)	
FEDERAL BUREAU OF INVESTIGATION	)	
and	)	
WILLIAM H. WEBSTER, DIRECTOR	)	
and	)	
UNITED STATES DEPARTMENT OF JUSTICE	)	
and	)	
EDWIN MEESE, ATTORNEY GENERAL	)	
and	)	
THE PROVIDENCE JOURNAL COMPANY	)	
	)	
	)	
IN THE MATTER OF APPLICATION TO ADJUDGE THE PROVIDENCE JOURNAL COMPANY AND ITS EXECUTIVE EDITOR, CHARLES M. HAUSER, IN CRIMINAL CONTEMPT	)	MISC. NO. 86-003B

ORDER

The Providence Journal Company and its Executive Editor, Charles M. Hauser have been found guilty of criminal contempt. The parties have been heard with respect to an appropriate penalty.

The offense is serious. The Providence Journal Company has chosen to defy an appropriate Court Order and boldly communicate that defiance to hundreds of thousands of residents of this area. The penalty must be substantial.

There are circumstances which suggest mitigation. Most significant is the damage which the Providence Journal Company has managed to inflict upon itself. It has succeeded in tarnishing its image as a law abiding institution, perhaps irretrievably. It has managed by its own efforts to seriously impeach its future credibility. This is indeed an unfortunate occurrence because so much depends upon the communication of information and views which are both believable and trustworthy.

Of lesser significance, but entitled to be weighed in the balance, is the fact that although a series of articles concerning the so-called "Patriarca Tapes" have been promised, only one article has been brought to this Court's attention. It appears that upon reflection, a decision was deliberately made not to make a bad situation worse.

The circumstances are quite unlikely to be repeated in the future. The Court is satisfied that the zealous First Amendment bias of the Journal Company is real though in this instance seriously misguided. True freedom requires that each person respect the rights of all others. A violation of any person's freedom diminishes the freedom of all.

In substance, the offense is a mistake in judgment conditioned by a mistaken but sincerely held belief in the righteousness of its action. Defendants actions were

wrong and the wrong must be righted as best it can. There is no totally satisfactory remedy. There is no practical way to turn back the clock and to restore things as they once were.

The purposes to be served are stated in *United States v. Mine Workers*, 33 U.S. 258, 302-303 (1947):

> Sentences for criminal contempt are punitive in their nature and are imposed for the purpose of vindicating the authority of the court. *Gompers v. Bucks Stove & Range Co., supra,* at 441. The interests of orderly government demand that respect and compliance be given to orders issued by courts possessed of jurisdiction of persons and subject matter. One who defies the public authority and willfully refuses his obedience, does so at his peril. In imposing a fine for criminal contempt, the trial judge may properly take into consideration the extent of the willful and deliberate defiance of the court's order, the seriousness of the consequences of the contumacious behavior, the necessity of effectively terminating the defendant's defiance as required by the public interest, and the importance of deterring such acts in the future.

The wrong was repeated more than 200,000 times. The Journal's publication sells at retail for .35¢ per copy. Additionally it receives advertising revenues. A penalty of .50¢ per copy is reasonable, and therefore a fine in the amount of $100,000 to be satisfied within 60 days is imposed against the Providence Journal Company.

Mr. Hauser, according to the evidence, was a principal actor. Others were involved but are not now before the Court. Although a jail term is permitted in the circumstances, because of the involvement of others, Mr. Hauser

might be perceived as a victim. Furthermore, a jail term would not serve a truly constructive purpose, would result in public expense and would not be as beneficial to the public as other alternatives. Mr. Hauser's sentence is suspended and he is placed on probation for a term of 18 months on the usual conditions and is further ordered to perform 200 hours of public service in a program approved by the Probation Office to be carried out within a period of 18 months from the entry of this order. The program will be designed by the Probation Office with a view to employ Mr. Hauser's talents as constructively as possible. The Court specifically suggests that Mr. Hauser's talents might be used in the efforts of the Rhode Island Heritage Commission to publish the Rhode Island Ethnic Pamphlet Series, designed to present and describe the various unique contributions, customs and folkways of ethnic groups to the State of Rhode Island.

SO ORDERED.

/s/ Francis J. Boyle, Chief Judge
United States District Court
District of Rhode Iesland

April 2, 1986.

• • •

SECTION II

Explanatory Note

Respondents, Providence Journal Company and Charles M. Hauser, appealed to the Court of Appeals for the First Circuit from a judgment of conviction entered in the District Court for the District of Rhode Island in a case entitled *In the Matter of Application to Adjudge the Providence Journal Company and its Executive Editor, Charles M. Hauser, in Criminal Contempt,* District Court Misc. No. 86-003B. Portions of that record are contained in Section I of the Joint Appendix.

Respondents moved in the Court of Appeals for the First Circuit for permission to supplement the record by adding to it the record of *Patriarca v. Federal Bureau of Investigation, et al.,* C.A. No. 85-0707B. That was the case where the order issued which respondents violated giving rise to the contempt proceeding, Misc. No. 86-003B. Respondents filed a record appendix in the Court of Appeals containing papers pertaining to *Patriarca v. Federal Bureau of Investigation, et al.*

The Court of Appeals then granted respondents' motion to supplement the record. A certified copy of the record of *Patriarca v. Federal Bureau of Investigation, et al.,* then was forwarded on June 3, 1986, by the District Court Clerk to the Court of Appeals.

Section II of this Joint Appendix contains papers from the *Patriarca v. Federal Bureau of Investigation, et al.,* record which were before the Court of Appeals when it considered respondents' appeal.

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

(*Raymond J. Patriarca v. Federal Bureau of Investigation, et al,* District Court C.A. No. 85-0707B)

November 8, 1985 Complaint filed.

November 8, 1985 Plaintiff's motion for temporary restraining order and injunctive relief filed.

November 8, 1985 John F. Cicilline's affidavit in support of motion for temporary restraining order filed.

November 13, 1985 Conference held. Hearing scheduled for November 15, 1985.

November 13, 1985 Order regarding plaintiff's motion for temporary restraining order is granted and entered.

November 14, 1985 Motion to adjudge in contempt filed.

November 15, 1985 Entry of appearance of Joseph V. Cavanagh, Jr., William P. Robinson, Edwards & Angell on behalf of defendant, WJAR-TV Television Ten, Inc., filed.

November 15, 1985 Motion to add WPRI-TV as a party defendant filed.

November 15, 1985 Motion to add WLNE-TV as a party defendant filed.

November 15, 1985 Hearing held regarding continuance of temporary restraining order. Mr. Cavanagh argues. The court wants copies of that which was provided to other defendants. Mr. Medeiros argues. Mr. Sammartino argues for the federal defendants. Mr. Cicilline argues for plaintiff. The court issues its decision to continue the restraining order. The

court schedules a hearing on the preliminary injunction request for Tuesday, November 19, 1986 at 10:00 a.m. Regarding the motion to adjudge in contempt, defendants need time to respond. Mr. Cicilline shall prepare an appropriate order. Mr. Cavanagh's motion to stay the continuance of the temporary restraining order is denied.

November 18, 1985 Federal defendants' memorandum in support of objection to plaintiff's motion for injunctive relief is filed.

November 18, 1985 Federal defendants' supplemental memorandum is filed.

November 19, 1985 Hearing held regarding preliminary injunction. All agree that obtaining of the information gathered by the FBI was illegal. Seven exhibits are received. All exhibits are made part of the record. Mr. Cicilline's motion to join WPRI-TV and WLNE-TV as defendants is granted. The government has the material which the court ordered produced. It is received under seal, is contained in one box and placed in the vault after being labeled government's Exhibit 1. WPRI-TV and WLNE-TV have not been served with the complaint. The court issues its decision regarding the preliminary injunction request against the FBI and Department of Justice and grants same. The preliminary injunction request against WJAR-TV Television Ten, Inc. and the Providence Journal Company is denied. The temporary restraining order is vacated. The government's motion to have its memorandum made part of the record is granted. An order granting a preliminary injunction against the government defendants is entered. Mr. Cavanagh is to prepare an order denying the preliminary injunction against WJAR-TV Television Ten, Inc. and the Providence Journal Company.

November 19, 1985 Entry of appearances of Messrs. Hindle, Edwards and Medeiros, Edwards & Angell in behalf of the Providence Journal Company is filed.

November 19, 1985 Order regarding plaintiff's motion for restraining order as to defendants FBI and Department of Justice (preliminarily enjoining action by those defendants) is granted and the order enters.

November 25, 1985 Defendant Providence Journal and WJAR-TV Television Ten, Inc.'s motion to dismiss is filed.

November 25, 1985 Providence Journal Company's motion for extension of time to file a memorandum in support of its objection to plaintiff's motion to adjudge in contempt is filed.

November 25, 1985 Defendant Providence Journal Company's objection to motion to adjudge in contempt is filed.

December 2, 1985 An order regarding the motion to adjudge in contempt which assigns the matter to be heard at 10:00 a.m. on January 6, 1986 and requires defendant Providence Journal Company to elect by December 16, 1985 in writing whether it desires a trial by jury is entered and filed.

December 4, 1985 Plaintiff's objection to Providence Journal Company and WJAR-TV Tele-

vision Ten, Inc.'s motion to dismiss is filed.

December 12, 1985 Order vacating the temporary restraining order of November 13, 1985 with respect to the Providence Journal Company and WJAR-TV Television Ten, Inc. is entered.

December 13, 1985 Stipulation dismissing plaintiff's claims against WJAR-TV Television Ten, Inc. with prejudice, no interest, no costs, is entered.

December 13, 1985 Stipulation dismissing plaintiff's complaint against WPRI-TV with prejudice, each side to bear its costs, is entered.

December 13, 1985 Stipulation dismissing complaint against WLNE-TV with prejudice with each party to bear its own costs is entered.

December 15, 1985 Notice of election of the Providence Journal not to claim a trial by jury is filed.

December 16, 1985 An order whereby the court appoints William A. Curran of the law firm of Hanson, Curran & Parks as prosecuting attorney with full authority to prosecute the pending motion for contempt is entered.

December 17, 1985 Entry of appearance of William A. Curran as prosecuting attorney is filed.

December 19, 1985 Entry of appearance of V. Garvey and M. Butler for the federal defendants is filed.

January 10, 1986 Federal defendants' motion to dismiss is filed.

January 10, 1986 Notice of filing by the Department of Justice of copies of materials for the court's *ex-parte, in camera* review is filed.

February 5, 1986 Motion to amend the complaint is filed.

February 11, 1986 Plaintiff's objection to defendants' motion to dismiss is filed.

February 11, 1986 Plaintiff's motion for extension of time to file a memorandum in support of his objection to defendants' motion to dismiss is filed.

March 10, 1986 Federal defendants' response to plaintiff's motion to amend the complaint is filed.

March 18, 1986 Opinion holding that the Providence Journal showed no respect whatsoever, and, therefore, it must be found in contempt of the order entered November 13, 1985 and scheduling a hearing at 10:00 a.m. on March 27, 1986 for the purpose of imposing a penalty is filed.

March 18, 1986 Plaintiff's motion to amend the complaint is granted and an order enters.

March 20, 1986 Order stating that after a hearing it is hereby found that the Providence Journal and its Executive Editor, Charles M. Hauser, are guilty of criminal contempt and scheduling a hearing for imposition of penalties for 10:00 a.m. on March 27, 1986 is filed and entered.

March 25, 1986 Stipulation that for the purposes of the contempt proceedings against respondents Providence Journal Company and Charles M. Hauser: (1) the net worth of the Providence Journal Company is in excess of $1,000,000, (2) the

net worth of Charles M. Hauser is in excess of $250,000, and (3) respondents will not contest the imposition of fines, if any, on the ground that the court did not have sufficient evidence concerning the financial status of the respondents is filed.

April 2, 1986 — An opinion holding that a penalty of fifty cents per copy is reasonable, and therefore a fine in the amount of $100,000 to be satisfied within sixty days is imposed against the Providence Journal. Mr. Hauser's sentence is suspended and he is placed on probation for a term of eighteen months on the usual conditions and is further ordered to perform 200 hours of public service in a program approved by the Probation Office to be carried out within a period of eighteen months from the entry of this order is entered.

April 3, 1986 — Notice of Appeal and fee filed.

April 3, 1986 — Providence Journal Company's application for stay of fine pending appeal filed. Said application is granted without surety by agreement and such order enters.

April 3, 1986 — Charles M. Hauser's application for stay pending appeal is filed. Said application is granted by agreement and such order enters.

April 24, 1986 — Federal defendants' motion to dismiss amended complaint is filed.

April 24, 1986 — Answer of Providence Journal Company to amended complaint is filed.

June 3, 1986 — Certified copy of pleadings from the record of *Patriarca v. FBI*, C.A. No. 85-0707B, is sent to Court of Appeals pursuant to order from the Court of Appeals granting respondents' motion to supplement the record on the appeal of Misc. No. 86-003B, *IN THE MATTER OF APPLICATION TO ADJUDGE THE PROVIDENCE JOURNAL COMPANY AND ITS EXECUTIVE EDITOR, CHARLES M. HAUSER, IN CRIMINAL CONTEMPT.*

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND

RAYMOND J. PATRIARCA, Individually and as Administrator of the Estate of Raymond L.S. Patriarca

v CIVIL ACTION NO. 85-0707B

FEDERAL BUREAU OF INVESTIGATION

and

WILLIAM H. WEBSTER, Director

and

UNITED STATES DEPARTMENT OF JUSTICE

and

EDWIN MEESE, ATTORNEY GENERAL

and

THE PROVIDENCE JOURNAL COMPANY

and

WJAR TELEVISION TEN

COMPLAINT

PARTIES

1. Raymond J. Patriarca is a citizen of the United States, and a resident of the State of Rhode Island. He is also the son of the late Raymond L.S. Patriarca, who during the years 1962 to 1965 was the owner of National Cigarette Service located at 168 Atwells Avenue in Providence. The plaintiff is also the administrator of the estate of Raymond L.S. Patriarca.

2. The defendant Federal Bureau of Investigation (hereinafter referred to as "F.B.I.") is an agency of the Executive branch of the United States Government.

3. Defendant, William H. Webster (hereinafter referred to as "The Director") is the Director of the F.B.I.

4. The defendant, United States Department of Justice (hereinafter referred to as "Justice Department") is an agency of the executive branch of the United States Government.

5. The defendant Edwin Meese ([sic] hereinafter referred to as "Attorney General" is the Attorney General of the United States and, as such, is in charge of the Justice Department.

6. The defendant Providence Journal (hereinafter referred to as the "Journal") is a corporation organized and existing under the laws of the State of Rhode Island, with its principal offices located at 75 Fountain Street, Providence, that is engaged in the business of publishing newspapers.

7. WJAR TELEVISION TEN ([sic] hereinafter referred to as "WJAR" is a television station whose offices are located at 111 Dorrance Street in the City of Providence, that is engaged in the business of dissemenating [sic] news.

JURISDICTION AND VENUE

8. This is an action brought under the Freedom of Information Act (hereinafter referred to as "The Act") 5 USC 552 to declare unlawful, the defendant's dissemenation [sic] of logs and airtels compiled during the course of

an illegal electronic surveillance during the years 1962 to 1965.

9. This court has subject matter jurisdiction over this action pursuant to 5 USC 552 (h)(l), and 18 USC 2510 et. seq.

10. Venue of this action is proper under 5 USC 552 (h)(l) because the plaintiff is a resident of this Judicial District.

CAUSE OF ACTION

11. In March of 1962, an electronic listening device was placed within premises located at 168 Atwells Avenue in Providence, which premises housed the offices of National Cigarette Services. National Cigarette Services was a business owned and operated by the father of the plaintiff.

12. The listening device which had been surreptitiously placed within the premises, by the FBI, was done so by means of an illegal entry and an illegal installation, all in violation of rights secured to the plaintiff and his now deceased father, by the Fourth Amendment to the United States Constitution.

13. That listening device was implanted and monitored until July of 1965 when a second illegal entry was occasioned by the defendant FBI to allow for its removal.

14. The defendant FBI, and its director, monitored those conversations from a listening post located within the general area of the 168 Atwells Avenue premises, and thereafter forwarded logs and airtels to other FBI officers and employees, and to the Department of Justice, and its Attorney General.

15. The conversations which were monitored and then reduced to handwritten, typed, and printed logs and airtels included conversations between Raymond L.S. Patriarca and others, Raymond L.S. Patriarca, and Raymond J. Patriarca, which were personal, medical, or similar and whose dissementation would constitute a clearly unwarranted invasion of personal privacy.

16. That the transcription of the logs and airtels was done in such a manner that it allowed for error, omission, and subjective analysis, thus making them an unreliable base for the dissemenation [sic] of news.

17. At a date, unknown to the plaintiff, the defendant, Department of Justice and its Attorney General authorized the release of the illegally obtained logs and airtels to the defendant Journal and to the defendant, WJAR, pursuant to request made by them under the Freedom of Information Act.

18. That on November 6, 1985, the defendant WJAR, dissemenated [sic] portions of logs furnished to them by the defendant FBI and its defendant Director.

19. That upon reasonable information and belief, the defendant Journal is in the process of preparing for the dissemenation [sic] of these airtels and logs in its newspapers.

20. That on October 4, 1985, the plaintiff sought copies of the airtels and logs from the United States Attorney for the District of Rhode Island (appendix A).

21. That on October 9, 1985, the plaintiff sought copies of the air tels [sic] and logs from the Defendant Director of the FBI (appendix B).

22. That copies of the requested documents have not been furnished to the plaintiff. (appendix C).

23. That conversations monitored and subsequently reduced to logs and air tels [sic] were of the most personal nature, and their release would clearly constitute an unwarranted invasion of the plaintiffs personal privacy and that of his late father.

24. That the conversations illegally monitored by the FBI and subsequently reduced to logs and airtels involve conversations between a father and others, and a father and son about such personal matters as the health of the parties involved, and an ailing mother; the upbringing and education of a child, and other similar type conversations, whose disclosure is all proscribed by the provisions of 5 USC 552 (b)(6) and 7(C).

25. That the disclosure, dissemenation [sic], release and publication of the aforesaid materials violates an established policy of the defendant Justice Department and its Attorney General (appendix d).

26. That the disclosure, release, dissemenation, and publication of the aforesaid materials involves the kind of insidious invasion of privacy that Congress intended to prevent by the creation of exemption to 5 USC 552.

Wherefore, your plaintiff prays for entry of the following relief:

1. A declaration that the defendants have improperly dissemenated [sic] material which has been exempted from the Freedom of Information Act.

2. An injunction against the defendants' further publication of 5 USC 552 (b)(6) and 7(C) information.

3. An order requiring the immediate production by the defendants of copies of the airtels and logs to the plaintiff.

4. An award to plaintiff of reasonable attorneys fees, and the costs of this suit.

RAYMOND PATRIARCA
By His Attorney

/s/ JOHN F. CICILLINE
165 Atwells Avenue
Providence, Rhode Island

October 4, 1985

Lincoln Almond, Esq.
United States Attorney
Federal Building
Providence, Rhode Island

Dear Mr. Almond:

Please be advised that I represent Raymond J. Patriarca, who is interested in obtaining a copy of the air-tels and logs compiled in connection with the surveillance of premises located at 168-170 Atwells Avenue. It is our understanding that these documents have already been released to the press.

I, therefore, request that you furnish me with a copy of these documents for Mr. Patriarca's review.

Sincerely,

John F. Cicilline
JFC/haq

United States Attorney
District of Rhode Island
Post Office Box 1401
Providence, Rhode Island, 02901
401/528-5477
FTS 836-5477

October 7, 1985

John F. Cicilline, Esq.
165 Atwells Avenue
Providence, Rhode Island 02903

Dear Mr. Cicilline:

This will acknowledge receipt of your letter of October 4, 1985, on behalf of Raymond J. Patriarca, seeking records in connection with the surveillance at 168-170 Atwells Avenue.

Your request should be forwarded to the Director of the Federal Bureau of Investigation in accordance with the provisions of the Freedom of Information Act.

Sincerely,

/s/ LINCOLN C. ALMOND
United States Attorney

LCA:by

October 9, 1985

Director
Federal Bureau of Investigation
Washington, D.C.

Dear Sir:

The Hartford Current [sic] recently published an article in which they claimed to have air tels [sic] and logs produced by the FBI in connection with their surveillance of premises located at 168-170 Atwells Avenue in Providence, Rhode Island during 1962 and 1963.

I represent Raymond J. Patriarca whose privacy interest is being violated by the publication of those logs and air

tels. In an effort to determine what further violations may take place by further publication, I requested that the United States Attorney for the District of Rhode Island furnish me with copies of the released air tels and logs. I was advised to request this information from you. I am, therefore, making a request that you forward to me on behalf of Mr. Patriarca, copies of those air tels and logs.
Sincerely,

John F. Cicilline
JFC/haq

(Seal)

U.S. Department of Justice
Federal Bureau of Investigation
Washington, D.C. 20535
November 01, 1985
Request No. 264233

RE: FBI SURVEILLANCE OF 168-170/19
62-1963 AIRTELS & LOGS

John F. Cicilline, Esq.
165 Atwells Avenue
Providence, RI 02903

Dear Requester:

This acknowledges your recent Freedom of Information-Privacy Acts (FOIPA) request submitted to the FBI.

[ ] Based on the limited information you provided, we cannot make an accurate search of our records. Please furnish your complete name, alias, date and place of birth, prior addresses, employments, and any specific data that would permit us to locate the documents you seek.

[ ] Please submit your notarized signature. This procedure is designed to insure that documents, if located, are released only to an individual having right of access to the information.

[ ] If you want a search of our Identification Division records for any arrest record that might pertain to you, please comply with the enclosed

instructions set forth in Attorney General Order 556-73. Fingerprint impressions are needed for comparison with records in the Identification Division to insure that an individual's record is not disseminated to an unauthorized person.

[X] We are currently searching the indices to our central records system files at FBI Headquarters for any documents which may pertain to your request. Upon completion of this search you will be notified of the results.

Your request has been assigned the number indicated above. Please use this number in all correspondence with us.

Sincerely yours,

/s/ James R. Hall
Chief
Freedom of Information-
Privacy Acts Section
Records Management Division

[ ] Enclosure

(Seal)

OFFICE OF THE DEPUTY ATTORNEY GENERAL
Washington, D.C. 20530

October 21, 1977

Matthew F. Medeiros, Esquire
One Hospital Trust Plaza
Providence, Rhode Island 02903

Dear Mr. Medeiros:

You appealed on behalf of your client, the *Providence Journal-Bulletin*, from the denial by Director Kelley of your request for access to records of certain electronic surveillances conducted by the Federal Bureau of Investigation.

After careful consideration of this appeal, I have decided to affirm the initial action of Director Kelley, but

to do so on narrow grounds. The records in question are clearly investigatory in nature and they were compiled for law enforcement purposes. Based on a review of these records by a member of my staff, however, it appears that there are no pending or contemplated law enforcement proceedings with which release would interfere. Accordingly, I have determined that 5 U.S.C. 552(b)(7)(A), one of the exemptions cited by Director Kelley, does not apply. I have also concluded that the records as to which he cited 5 U.S.C. 552(b)(7)(D) are actually outside the scope of your client's request, rendering that exemption inapplicable as well. As a result, I am affirming the initial action in this case solely on the basis that release of the requested records, or any reasonably segregable portion of them, would result in an unwarranted invasion of personal privacy. 5 U.S.C. 552(b)(7)(C).

In reaching the conclusion that these records should not be released, I have considered the public interest in their contents and the fact that your client would serve as a conduit for the transmittal of this information to the public. Of overriding importance, however, is the fact that the conversations in question were intercepted in willful and flagrant violation of the Constitution and applicable Federal Law. The Government could not and cannot use this material in court in any way against the parties to these conversations or any of the persons mentioned therein. As a general proposition, the Government should not be allowed or forced to release unlawfully obtained evidence, thereby doing indirectly that which the law forbids doing directly. In my view, the privacy provisions of the Freedom of of [sic] Information Act can properly be applied, and should be applied, to prevent such a result. As to individuals merely mentioned in the course of these intercepted conversations, this conclusion is reinforced when one considers who the sources of the references to them are, as well as the fact that the content of the references is unverified. On balance, it is my judgment that the public interest in the release of these materials, although substantial, is nonetheless insufficient to outweigh the per-

sonal privacy interests involved. Because the release of these materials is not required by the Freedom of Information Act, their disclosure as a matter of agency discretion is prohibited by the Privacy Act of 1974.

As you are aware, judicial review of my action on this administrative appeal is available to your client in the United States District Court for the judicial district in which it has its principal place of business, or in the District of Columbia, which is also where the records it seeks are located.

Sincerely,

Peter F. Flaherty
Deputy Attorney General

/s/ By: Quinlan J. Shea Jr., Director
Office of Privacy and Information Appeals

IN THE DISTRICT COURT
OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

RAYMOND J. PATRIARCA, Individually
and as Administrator of the Estate of
Raymond L.S. Patriarca

V

FEDERAL BUREAU OF INVESTIGATION

and

WILLIAM H. WEBSTER, Director

and CIVIL ACTION NO.
85-0707B

UNITED STATES DEPARTMENT OF JUSTICE

and

EDWIN MEESE, ATTORNEY GENERAL

and

THE PROVIDENCE JOURNAL COMPANY

and

WJAR TELEVISION TEN

MOTION OF PLAINTIFF FOR TEMPORARY
INJUNCTION and/or INJUNCTIVE RELIEF

The plaintiff by and through his counsel hereby moves this Honorable Court for the entry of an order granting a temporary restraining order and/or any other relief that this Court may deem just and proper enjoining the named defendants from dissemenating or publishing logs and airtels compiled as a result of the electronic surveillance

conducted at 168 Atwells Avenue between March of 1962 and July of 1965.

RAYMOND J. PATRIARCA
By his Attorney

/s/ JOHN F. CICILLINE
165 Atwells Avenue
Providence, Rhode Island

IN THE DISTRICT COURT
OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

RAYMOND J. PATRIARCA, Individually
and as Administrator of the Estate of
Raymond L.S. Patriarca

V

FEDERAL BUREAU OF INVESTIGATION

and

WILLIAM H. WEBSTER, Director

and CIVIL ACTION NO.
85-0707B

UNITED STATES DEPARTMENT OF JUSTICE

and

EDWIN MEESE, ATTORNEY GENERAL

and

THE PROVIDENCE JOURNAL COMPANY

and

WJAR TELEVISION TEN

AFFIDAVIT IN SUPPORT OF
MOTION FOR TEMPORARY INJUNCTIVE RELIEF

I, John F. Cicilline, Attorney for the plaintiff hereby on oath depose and say:

1. That I am counsel for the plaintiff in the above captioned legal proceeding.

2. That the dissemenation and publication of the logs and airtels will cause irreperable [sic] harm, damage, and

injury to the Constitutional and privacy rights of the plaintiff.

3. That the complaint filed on behalf of the plaintiff raises constitutional and statutory questions of law which may be mooted unless the plaintiffs motion for injunctive relief is granted.

4. That the only certain way to protect the rights of the plaintiff is by the grant of injunctive relief.

/s/ JOHN F. CICILLINE
165 Atwells Avenue
Providence, Rhode Island

Subscribed and sworn to before this 8 day of November, 1985.

/s/ James Ruggiero
NOTARY PUBLIC

IN THE DISTRICT COURT
OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

Raymond J. Patriarca, Individually
and as Administrator of the Estate
of Raymond L.S. Patriarca

v.

Federal Bureau of Investigation

and

William H. Webster, Director

and

United States Department of Justice

and

Edwin Meese, Attorney General

and

The Providence Journal Company

and

WJAR Television Ten

ORDER

In the above entitled cause the plaintiffs motion for temporary restraining order is granted to the extent that the defendants, severally and individually are restrained from distrubing [sic], disseminating and otherwise publishing the logs or airtels, or reports thereof, generated as a result of the electronic surveillance conducted at 168 Atwells Avenue, between March of 1962 and July of 1965, as

they relate to Raymond J. Patriarca. pending [sic] hearing at 10:00 A.M. on Friday, Nov 15, 1985

/s/ Francis J. Boyle
Chief Judge

Entered as an order of this court this 13th day of November 1985.

/s/ Robert R. Henry
Deputy Clerk

IN THE DISTRICT COURT
OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

Raymond J. Patriarca, individually
and as Administrator of the Estate
of Raymond L.S. Patriarca

V

Federal Bureau of Investigation

and

CIVIL ACTION NO.
85-0707-B

William H. Webster, Director

and

United States Department of Justice

and

Edwin Meese, Attorney General

and

The Providence Journal

and

WJAR Television Ten

MOTION TO ADJUDGE IN CONTEMPT

Now comes the plaintiff in the above entitled cause and avers as follows:

1. That on November 8, 1985, he filed a complaint in the United States District Court to declare unlawful the

defendants dissemenation of logs and airtels compiled during the course of an electronic surveillance during the years 1962 through 1965, at 168 Atwells Avenue in Providence.

2. That the complaint asserted that the dissemenation publication and distributions of these logs and airtels served no public purpose, and in fact, involved the kind of insidious invasion of privacy that Congress intended to prevent by the creation of exemptions to 5 USC 552.

3. That in order to adequately protect his right to privacy, the plaintiff sought injunctive relief pending a determination of the issue.

4. That the District Court on November 13, 1985, entered an order temporarily restraining the defendants severally and individually "from distributing, dissemenating and otherwise publishing the logs, airtels or reports thereof, generated as a result of the electronic surveillance conducted at 168 Atwells Avenue between March of 1962 and July of 1965 as they related to Raymond J. Patriarca."

5. That the party defendants were each notified of the courts order.

6. That notwithstanding such order, the Providence Journal, and its Vice President and Executive Editor, Charles Hauser, on November 14, 1985, distributed, dissemenated, and published the logs, airtels, and reports thereof.

7. That as a result of such publication, distribution and dissemenation, the plaintiffs right to privacy has been

further violated and invaded causing him irreparable harm.

8. That the dissemenation, distribution and publication of the aforesaid materials was done with malice, disrespect for the court, and with a deliberate indifference to accepted court procedure.

9. That as a result of such publications, distribution, and dissemenation, the dignity and authority of the Court has been assaulted, and the defendant Providence Journal Company and its Vice President and Executive Editor Hauser are guilty of contempt.

Wherefore, your Plaintiff Raymond J. Patriarca moves that this Honorable Court adjudge the defendant, Providence Journal Company and its Executive Director in contempt of court.

RAYMOND J. PATRIARCA
By his Attorney

/s/ JOHN F. CICILLINE
165 Atwells Avenue
Providence, Rhode Island

DATED: NOVEMBER 14, 1985

(Certification Omitted)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

RAYMOND J. PATRIARCA	)	
	)	
Vs.	)	C.A. No. 85-0707 B
	)	
FEDERAL BUREAU OF INVESTIGATION, ET AL	)	

ENTRY OF APPEARANCE

We hereby enter our appearance on behalf of defendant WJAR-TV Television Ten in the above-entitled case.

/s/ Joseph V. Cavanagh, Jr.

/s/ William P. Robinson
Edwards & Angell
2700 Hospital Trust Tower
Providence, RI 02903
401-274-9200

Dated: November 15, 1985

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

RAYMOND J. PATRIARCA, Individually and as Administrator of the Estate of Raymond L. S. Patriarca	)	
	)	C. A. No. 85-0707
vs	)	
FEDERAL BUREAU OF INVESTIGATION	)	
and	)	
WILLIAM H. WEBSTER, DIRECTOR	)	
and	)	
UNITED STATES DEPARTMENT OF JUSTICE	)	
and	)	
EDWIN MEESE, ATTORNEY GENERAL	)	
and	)	
THE PROVIDENCE JOURNAL COMPANY	)	
and	)	
WJAR TELEVISION TEN	)	

MEMORANDUM IN SUPPORT OF OBJECTION TO PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF

In this case, the plaintiff requests that the defendants be enjoined from further disclosure, publication, release and dissemination of certain material requested from the federal defendants pursuant to the Freedom of Information Act, 5 U.S.C. 552 (FOIA). The plaintiff declares that jurisdiction is founded upon the FOIA. It is submitted, there is no jurisdiction under the FOIA for the Court to grant the injunction. *See Chrysler Corp vs Brown* 441 U.S. 281, 290-294, (1979); *G.T.E. Sylvania, Inc. vs Consumers Union* 445 U.S. 375, 378 (N2) 1980; St. Michael's

Convalescent vs State of Cal 643 F2d 1369 (9th Circ- [sic] 1981); *Now Washington D.C. Chapt vs Soc Sec Ad* 738 F2d 727 (D.C. Circ- [sic] 1984) § 745; *General Electric Co. vs U. S. NVC. req.* 750 F2 1394 (7th Circ- [sic] 1984). As the Supreme Court in *Chrysler* stated at page 292:

> "That the FOIA is exclusively a disclosure statute is, perhaps, demonstrated most convincingly by examining its provision for judicial relief. Subsection (a)(4)(B) gives federal district courts "jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B). That provision does not give the authority to bar disclosure, and thus fortifies our belief that Chrysler, and courts which have shared its view, have incorrectly interpreted the exemption provisions of the FOIA."

The plaintiff also cites the related case of *Providence Journal Company vs F.B.I.* for support of his request. The Court did not grant injunctive relief in the *Providence Journal Case.* Nor did it bar future release or dissemination of the material. As stated at page 1014 of the decision:

> "[D]isclosure, not secrecy, is the dominant objective of the [FOIA]", *Department of the Air Force v. Rose,* 425 U.S. 352, 361, 96 S.Ct. 1592, 1599, 48 L.Ed.2d 11 (1976), and Congress has decried the news media's underuse of the FOIA, see 460 F. Supp. at 790. But these concerns must give way to Congress' specific protection of this narrow class of information. Our holding is not broad. It gives agencies no sweeping power to withhold information, and does not create a new, general exemption for illegally obained [sic] information. We are concerned only with the "contents" of "wire" or "oral communications" intercepted"

> [sic] before June 19, 1968, by means of an "electronic, mechanical, or other device", 18 U.S.C. § 2510(8), (1), (2), (4), and (5), in violation of the Constitution or federal law.[9] Moreover, we need not decide to what extent "aggrieved person[s]", 18 U.S.C. § 2510(11), or a criminal prosecutor might have rights different from the third party which brought this suit. We decide only that the FBI may properly turn down this FOIA request under Exemption 7(C).

It is respectfully submitted, under the circumstances, the Court lacks jurisdiction under the FOIA to grant injunctive relief. Further the *Providence Journal* case did not bar future dissemination of the material.

UNITED STATES OF AMERICA,
BY ITS ATTORNEYS,
LINCOLN C. ALMOND
United States Attorney
EVERETT C. SAMMARTINO
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

RAYMOND J. PATRIARCA, Individually and as Administrator of the Estate Raymond L.S. Patriarca	)	
vs	)	C.A. NO. 85-0707
FEDERAL BUREAU OF INVESTIGATION	)	
and	)	
WILLIAM H. WEBSTER, DIRECTOR	)	
and	)	
UNITED STATES DEPARTMENT OF JUSTICE	)	
and	)	
EDWIN MEESE, ATTORNEY GENERAL	)	
and	)	
THE PROVIDENCE JOURNAL COMPANY	)	
and	)	
WJAR TELEVISION TEN	)	

FEDERAL DEFENDANT'S [sic] SUPPLEMENTAL MEMORANDUM

(Received Nov. 18, 1985)

The Federal defendants respectfully emphasize, that the plaintiff seeks injunctive relief only under the Freedom of Information Act, 5 USC 552 (FOIA). It is clear that the Supreme Court has stated that there is no jurisdiction under the FOIA for a court to enjoin release of material. *Chrysler Corp. vs Brown*, 441 U.S. 281; and other cases cited in previous memorandum. The Supreme Court in *Chrysler* explicitly stated beginning at page 293:

> "Enlarged access to governmental information undoubtedly cuts against the privacy concerns of non-

governmental entites [sic], and as a matter of policy some balancing and accommodation may well be desirable. We simply hold here that Congress did not design the FOIA exemptions to be mandatory bars to disclosure.

This conclusion is further supported by the legislative history. The FOIA was enacted out of dissatisfaction with § 3 of the APA, which had not resulted in as much disclosure by the agencies as Congress leter [sic] thought desirable. Statements in both the Senate and House Reports on the effect of the exemptions support the interpretation that the exemptions were only meant to permit the agency to withhold certain information, and were not meant to mandate nondisclosure. For example, the House Report states:

> "[The FOIA] sets up workable standards for the categories of records which may be exempt from public disclosure. . . ."
>
> ". . . There may be legitimate reasons for nondisclosure and [the FOIA] is designed to permit nondisclosure in such cases."
>
> "[The FOIA] lists in a later subsection the specific categories of information which may be exempted from disclosure."

We therefore conclude that Congress did not limit an agency's discretion to disclose information when it enacted the FOIA. It necessarily follows that the Act does not afford Chrysler ay [sic] right to enjoin agency disclosure."

(Footnotes omitted)

Although the Court in its interim decision on November 15, 1985, feels that disclosure would "destroy the status quo," it still is necessary to base the Court's action on a jurisdictional predicate. Since the plaintiff claims only the FOIA as his jurisdictional underfooting and since the

Supreme Court has stated there can be no jurisdiction under the FOIA for a reverse FOIA injunction case, the Court cannot "create" jurisdiction under the FOIA. This Court is bound by Supreme Court holdings, unless and until the holding is reversed by the Court or a properly legislated law.

UNITED STATES OF AMERICA,
BY ITS ATTORNEYS,

LINCOLN C. ALMOND
United States Attorney

/s/ Everett C. Sammartino
EVERETT C. SAMMARTINO
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

RAYMOND J. PATRIARCA	)	
	)	
v.	)	C.A. No.
	)	85-0707 B
FEDERAL BUREAU OF INVESTIGATION, ET AL.	)	
	)	

ENTRY OF APPEARANCE

(Filed November 19, 1985)

We hereby enter our appearance on behalf of defendant Providence Journal Company in the above-entitled case.

/s/ Edward F. Hindle

/s/ Knight Edwards

/s/ Matthew F. Medeiros
EDWARDS & ANGELL
2700 Hospital Trust Tower
Providence, RI 02903
401-274-9200

November 18, 1985

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

RAYMOND J. PATRIARCA	)	
	)	
v.	)	C.A. No. 85-0707/B
	)	
FEDERAL BUREAU OF INVESTIGATION, ET AL.	)	

OBJECTION BY DEFENDANT
PROVIDENCE JOURNAL COMPANY
TO MOTION TO ADJUDGE IN CONTEMPT

Defendant Providence Journal Company objects to plaintiff's motion to adjudge it in contempt on the grounds to be set forth in a memorandum to be filed on or before December 13, 1985.

By its attorneys,
/s/ Edward Hindle
/s/ Knight Edwards
/s/ Joseph V. Cavanagh, Jr.
EDWARDS & ANGELL
2700 Hospital Trust Tower
Providence, Rhode Island 02903

November 25, 1985

(Certificate of Service Omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

RAYMOND J. PATRIARCA, Individually and as Administrator of the Estate of Raymond L.S. Patriarca	)	
	)	
v.	)	
	)	
FEDERAL BUREAU OF INVESTIGATION and WILLIAM H. WEBSTER, DIRECTOR, and UNITED STATES DEPARTMENT OF JUSTICE, and EDWIN MEESE, ATTORNEY GENERAL and THE PROVIDENCE JOURNAL COMPANY and WJAR TELEVISION TEN	)	C. A. NO. 85-0707B

ORDER

Upon consideration of Plaintiff's motion to adjudge Defendant Providence Journal Company and its Executive Editor Charles M. Hauser in contempt of the order of this Court dated November 13, 1985 as set forth in said motion and the objection of The Providence Journal Company filed November 25, 1985, Plaintiff's motion to adjudge Defendant The Providence Journal Company and its Executive Editor Charles M. Hauser and the objection filed November 25, 1985 are assigned to be heard at 10:00 o'clock A.M. on Monday, January 6, 1986. Defendant Providence Journal shall elect on or before December 16, 1985 in writing filed in the office of the Clerk of this Court, whether or not it desires a trial by jury.

ENTERED as an Order of this Court this 2nd day of December, A.D., 1985.

SO ORDERED.

/s/ Francis J. Boyle
Francis J. Boyle, Chief Judge
United States District Court
District of Rhode Island
Dec 2, 1985

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

RAYMOND J. PATRIARCA, Individually and as Administrator of the Estate of Raymond L.S. Patriarca	)	
v.	)	
FEDERAL BUREAU OF INVESTIGATION and WILLIAM H. WEBSTER, DIRECTOR, and UNITED STATES DEPARTMENT OF JUSTICE, and EDWIN MEESE, ATTORNEY GENERAL and THE PROVIDENCE JOURNAL COMPANY and WJAR TELEVISION TEN	)	C.A. NO. 85-0707B

ORDER

In accord with the provisions of Rule 42(b) of the Federal Rules of Criminal Procedure, since the United States Attorney for the District of Rhode Island represents parties who are Defendants in this action, and since the attorney for Plaintiff has declined to appear as prosecutor in this action, the Court hereby appoints William A. Curran of the law firm of Hanson, Curran and Parks, 1210 Turks Head Building, Westminster Street, Providence, Rhode Island, 02903, as prosecuting attorney with full au-

thority to prosecute the pending Motion for Contempt of this Court's Order of November 13, 1985.

SO ORDERED.

/s/ Francis J. Boyle
Francis J. Boyle, Chief Judge
United States District Court
District of Rhode Island
December 16, 1985.

UNITED STATES DISTRICT COURT
FOR
THE DISTRICT OF RHODE ISLAND

RAYMOND J. PATRIARCA	)	
	)	
v.	)	C.A. NO. 85-0707 B
	)	
FEDERAL BUREAU OF INVESTIGATION	)	
and	)	
UNITED STATES DEPARTMENT OF JUSTICE	)	
and	)	
EDWIN MEESE, ATTORNEY GENERAL	)	
and	)	
THE PROVIDENCE JOURNAL COMPANY	)	
	)	
	)	
IN THE MATTER OF APPLICATION TO ADJUDGE THE PROVIDENCE JOURNAL COMPANY AND ITS EXECUTIVE EDITOR, CHARLES M. HAUSER, IN CRIMINAL CONTEMPT	)	MISC. NO. 86-003 B

ORDER

(Received March 20, 1986)

This matter came on for hearing before this Court pursuant to an order directed to the respondents to show cause why the Providence Journal Company and its Executive Editor, Charles M. Hauser, should not be found guilty of criminal contempt and, after a hearing thereon and upon consideration of the facts, the arguments and

the authorities cited in the briefs of counsel, it is hereby found that:

The Providence Journal Company and its Executive Editor, Charles M. Hauser, are guilty of criminal contempt.

This matter is set down for hearing on the imposition of penalties against the respondents for the 27th day of March, 1986 at 10:00 a.m.

ENTERED as an Order of this Court this — day of March, 1986.

SO ORDERED:

/s/ Francis J. Boyle, Chief Judge
United States District Court
District of Rhode Island
March 19, 1986

(Proof of Service Omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

RAYMOND J. PATRIARCA Plaintiff, v. FEDERAL BUREAU OF INVESTIGATION, et al., Defendants.	)	Civil Action No. 85-0707

NOTICE OF FILING BY THE DEPARTMENT OF JUSTICE

The Clerk of this Court will please take notice that, pursuant to the Court's request on November 11, 1985, defendant the United States Department of Justice, herewith submits for filing for the court's *ex parte, in camera* review copies of all pages containing statements to, by, or about Raymond J. Patriarca exerpted from documents submitted under seal to the Court on November 11, 1985. These are exerpts from all documents that had been released by the Federal Bureau of Investigation, as of November 11, 1985, pursuant to third party FOIA requests for summaries and transcripts of the electronic surveillance conducted at 168 Atwells Avenue, Providence, Rhode Island, between March 1962 and July 1965.

Respectfully submitted,

RICHARD K. WILLARD
Assistant Attorney General

LINCOLN C. ALMOND
United States Attorney

EVERETT SAMMARTINO
Assistant United States Attorney

/s/ Vincent M. Garvey/MSB
VINCENT M. GARVEY

/s/ Mona S. Butler
MONA S. BUTLER

U.S. Department of Justice
Civil Division, Room 3337
10th & Pennsylvania Ave., N.W.
Washington, D.C. 20530
Telephone: (202) 633-3336

Attorneys for Federal Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

RAYMOND J. PATRIARCA Plaintiff, v. FEDERAL BUREAU OF INVESTIGATION, et al., Defendants.	)	Civil Action No. 85-0707B

FEDERAL DEFENDANTS'
MOTION TO DISMISS AMENDED COMPLAINT

The federal defendants, Department of Justice, Federal Bureau of Investigation, Edwin Meese, and William H. Webster, hereby move, pursuant to Rule 12(b)(1) and 12(b)(6), Fed. R. Civ. P., to dismiss plaintiff's Amended Complaint for lack of jurisdiction and for failure to state a claim upon which relief can be granted. Neither the Freedom of Information Act, 5 U.S.C. § 552, nor Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510, *et seq.*, confers jurisdiction to enjoin an agency of the United States from releasing documents requested under the FOIA and, in any event, plaintiff's claim for injunctive relief is now moot. In addition, plaintiff has failed to state a claim for damages under the Privacy Act, 5 U.S.C. § 552a, the Crime Control Act, or the United States Constitution.

In support of this motion, the Court is referred to the memorandum of points and authorities and declaration of

Frank C. Underwood, filed herewith, as well as to the memorandum of points and authorities filed on January 10, 1986, in support of Federal Defendants' Motion to Dismiss.

Respectfully submitted,

RICHARD K. WILLARD
Assistant Attorney General

LINCOLN C. ALMOND
United States Attorney

EVERETT SAMMARTINO
Assistant United States Attorney

/s/ Vincent M. Garvey/
Mona S. Butler
VINCENT M. GARVEY

/s/ Mona S. Butler
MONA S. BUTLER

U. S. Department of Justice
Civil Division, Room 3337
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Telephone: (202) 633-3336

Attorneys for Federal Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

RAYMOND J. PATRIARCA, Plaintiff v. FEDERAL BUREAU OF INVESTIGATION, and WILLIAM H. WEBSTER, DIRECTOR and UNITED STATES DEPARTMENT OF JUSTICE and EDWIN MEESE, ATTORNEY GENERAL and THE PROVIDENCE JOURNAL COMPANY, Defendants	Civil Action No. 85-0707B

AMENDED COMPLAINT

Paragraphs 1 through 26 of the original Complaint, along with the prayer for relief contained in said Complaint, are hereby realleged and incorporated herein by reference.

COUNT TWO—5 U.S.C. SECTION 552a

27. Count Two is brought pursuant to the "Privacy Act", 5 U.S.C. Section 552a, against the defendants, United States Department of Justice ("Justice Department") and Federal Bureau of Investigation ("FBI").

JURISDICTION

28. This Court has jurisdiction over this count, pursuant to 5 U.S.C. Section 552a(g)(1)(D), and 28 U.S.C. Section 1331.

29. The defendants, Justice Department and FBI, are "agencies" as that term is defined in 5 U.S.C. Section 552a and 5 U.S.C. Section 552(e), and are subject to all provisions contained in said "Privacy Act."

30. The logs and airtels that were released by said defendants (see Paragraph 11 & 17, above) constituted a "record as that term is defined in 5 U.S.C. Section 552a (a)(4).

31. Said defendants' release of said record was not done pursuant to a written request by, or with the prior written consent of, the plaintiff, who is the individual to whom the record pertains, nor was said release required under the Freedom of Information Act, 5 U.S.C. Section 552, thus violating the "Conditions of Disclosure" of said "Privacy Act," 5 U.S.C. Section 552a(b).

32. Said violation of the "Privacy Act" had an adverse effect on the plaintiff.

33. Said violation of the "Privacy Act" was intentional or willful.

WHEREFORE, in this Count Two, the plaintiff prays for entry of the following relief against the defendants, the Justice Department and the FBI:

1. Actual damages of no less than one thousand dollars ($1,000.00);

2. Litigation costs and reasonable attorneys' fees.

COUNT THREE—18 U.S.C. SECTIONS 2510-2520

34. Paragraphs 1 through 26 of the original Complaint are hereby realleged and incorporated herein by reference.

35. Count Three is brought pursuant to 18 U.S.C. Section 2520, against William H. Webster and Edwin Meese for the unlawful disclosure of the plaintiff's oral communications, and against the Providence Journal Company ("the Journal") for the unlawful use of such communications.

JURISDICTION

36. The Court has jurisdiction over this count, pursuant to 18 U.S.C. Section 2520, and 28 U.S.C. Section 1331.

37. All of said defendants are "persons" as that term is defined in 18 U.S.C. Section 2510(6); and the conversations between the plaintiff and the plaintiff's father (see paragraphs 11-15, above) constitute "oral communications," as that term is defined in 18 U.S.C. Section 2510(2).

38. The placing of an electronic listening device at 168 Atwells Avenue, Providence, and the subsequent interception of the oral communications that took place

there, were in violation of all relevant Federal constitutional and statutory provisions, including the Fourth Amendment to the Constitution.

39. The disclosure of the oral communications involving the plaintiff by the defendants, William H. Webster and Edwin Meese, or by persons for whose conduct said defendants are responsible, constitutes a violation of 18 U.S.C. Sections 2510-2520.

40. The publication of said oral communications by the Journal constitutes an unlawful use of said communications, in violation of 18 U.S.C. Sections 2510-2520.

WHEREFORE, in this Count Three, the plaintiff prays for entry of the following relief against the defendants, William H. Webster, Edwin Meese and the Journal:

1. Actual damages of no less than one thousand dollars ($1,000.00);

2. Punitive damages, in an amount to be determined by the Court;

3. Litigation costs and reasonable attorneys' fees.

COUNT FOUR—28 U.S.C. SECTION 1331 AND THE FOURTH AMENDMENT

41. Paragraphs 1 through 26 of the original Complaint, and paragraphs 38 of this Amended Complaint, are hereby realleged and incorporated herein by reference.

42. Count Four is brought pursuant to 28 U.S.C. Section 1331 and the Fourth Amendment to the United States Constitution, against William H. Webster and Edwin Meese, and against the Journal.

JURISDICTION

43. The Court has jurisdiction over this count, pursuant to 28 U.S.C. Section 1331 and the Fourth Amendment to the United States Constitution.

44. The willful disclosure of unconstitutionally-intercepted communications of the plaintiff by the defendants, William H. Webster and Edwin Meese, or by persons for whose conduct said defendants were responsible, constitutes a violation of the plaintiff's rights guaranteed by the Fourth Amendment to the United States Constitution.

45. The obtaining and publishing of communications of the plaintiff by the Journal, which the Journal knew to have been the "fruits" of unconstitutional searches and/or seizures, constitutes a violation by the Journal of the plaintiff's rights guaranteed by the Fourth Amendment, and constitutes a conspiracy between the Journal and Federal officials to violate said Fourth Amendment rights.

WHEREFORE, in this Count Four, the plaintiff prays for entry of the following relief against the defendants, William H. Webster, Edwin Meese, and the Journal:

1. Actual damages, in an amount to be determined by the Court;

2. Punitive or exemplary damages, in an amount to be determined by the Court;

3. Litigation costs and reasonable attorneys' fees.

Raymond J. Patriarca
by his attorneys,
/s/ John F. Cicilline
John F. Cicilline
165 Atwells Avenue
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